

PLAN COMMISSION

PLN20060710-1
UNAPPROVED MINUTES

July 10, 2006

A regular meeting of the Plan Commission of the City of Cedarburg was held on Monday, July 10, 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, Joe Emmerich, Keith Kaiman; Park & Forestry Chairperson James Schara (arrived at 7:30 p.m.)

Excused - Brook Brown

Also Present - City Attorney Kaye Vance; City Planner Jon Censky; Light & Water General Manager Dale Lythjohan; 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 Commissioner Kaiman to approve both the minutes of June 5, 2006. The motion was seconded by Council Member Beck and carried without a negative vote, with Commissioner Brown excused.

COMMENTS AND SUGGESTIONS FROM CITIZENS

No comments or suggestions were offered at this time.

PLAN COMMISSION AND JOINT EXTRATERRITORIAL ZONING COMMITTEE (JETZCO) INFORMATION REVIEW, DISCUSSION REGARDING PROCEDURES AND POSSIBLE ACTIONS CONCERNING PROCESS, PLAN, ZONING AND REGULATIONS FOR THE EXTRATERRITORIAL AREA ALONG HWY. 60 FROM SHEBOYGAN ROAD TO HORNS CORNERS ROAD

Planner Censky's staff memo reminded Commissioners that they were provided with background information at the May meeting, which included the map identifying the extraterritorial area, the Town zoning map, the zoning ordinance recently adopted by the Town Board and the adopted Town Center Development Standards. This information reveals the aggressive land use program being considered by the Town for the area in the vicinity of 5 Corners. Planner Censky advised that the packet included the Town's Zoning for the area and a report by John R. Jansen, P.G., Ph.D., Senior Geoscientist, Aquifer Science and Technology a division of Ruekert/Mielke, which discusses the risks of contamination created by future development near the Prochnow Landfill.

Planner Censky's memo continued that the purpose of the Committee was to work cooperatively on a land use plan for the area. According to State Stat. 62.23(7a)(c), the entire Plan Commission shall participate with the joint Committee in the preparation of the plan and regulations, however, only the

members of the joint Committee shall vote on matters relating to the plan and regulations. This Committee shall formulate tentative recommendations for the district plan and regulations, and shall then hold a public hearing. Opportunities shall be provided to representatives of the Town Board and to any other persons wishing to be heard. The Common Council may adopt, by ordinance, the proposed district plan and regulations recommended by the JETZCO following a separate public hearing. The Common Council, however, can only adopt the land use plan and zoning regulations if it receives a favorable vote of the majority of the 6 members of the joint Committee.

Mayor Myers announced that the Town JETZCO (Joint Extraterritorial Zoning Committee) Members were directed not to attend the meeting on the basis that a recommendation from the City Plan Commission was necessary before they became involved, according to an e-mail from Town Administrator Joshua Smith. The e-mail also requested that a separate meeting of the JETZCO occur before a meeting is conducted with the entire City Plan Commission.

Mayor Myers disagreed with the Town positions, noting that the State Statute is very clear that the JETZCO meets with the Plan Commission unless, in the context of the Plan Commission, they decide to meet separately. The purpose of the JETZCO was to determine the best land uses for the 5 Corners area and Highway 60 corridor. Plans were formulated by the Town of Cedarburg that caused great concern for purposes of future planning by the City, and for public health purposes. As a result, the City elected to form a JETZCO, which was meant to be an opportunity for members appointed by the Town Board and members representing the City to cooperatively develop a land use plan and zoning that would be in the best interest of the entire community. Mayor Myers noted it was unfortunate that the Town Members decided not to attend the meeting, but even though a JETZCO meeting could not be held, the Plan Commission could address some of the existing issues related to the extraterritorial area that prompted the creation of the Committee. One issue, not the least of which, is the concern regarding potential contamination of water wells in the area. He pointed out that the areas developed in the Town would require private septic systems and private water wells. The area under discussion is located next to and includes part of the Prochnow Landfill, which has been included on the Superfund list. In the past, wells in that area were found to be contaminated and the City, under EPA order, was required to provide at no cost to the landowners (at the cost of the taxpayers) City water to those properties in the Town. Obviously, the City desires to prevent a similar situation from occurring.

Mayor Myers continued that the City has an interest in land use planning that is in the best interest of the entire community—economic development, how it should look—and State Statute grants the City rights to provide input into what type of development occurs at its borders and within its Extraterritorial Jurisdiction. As Mayor, along with the Common Council, it was decided that the City had an obligation to its constituents to assert this authority in a manner that was thought to have been cooperative with the Town Board Members.

Mayor Myers introduced Light & Water's General Manager Dale Lythjohan, who was asked to attend the meeting to review the analysis drafted May 8, 2006 by John R. Jansen, P.G., Ph.D. of Acquirer Science & Technology in Waukesha.

Manager Lythjohan reported that staff has always had concerns about potential groundwater contamination in the 5 Corners area and back in late April approached Mayor Myers on whether, rather than only having staff concerns, it would be appropriate to hire an expert to analyze the public record to determine if there were issues of concern. Dr. Jansen did review the public domain files of the DNR, the City and others for the basis of his report. No testing was done or additional test wells dug, but is an analysis of existing public record documents. The analysis concludes that

there is significant doubt of a safe drinking supply in the area. This is not definitive, due to the lack of sufficient tests to date.

Manager Lythjohan continued that it is common knowledge that the soils in the area are contaminated and that the deep aquifer (800 to 1,000 feet deep) groundwater is contaminated as well. The local aquifer, the first 100 feet of soils, was also been found to be contaminated. He has always been told the deep water aquifer moves to the south/southeast, but learned that between the deep aquifer and the surface, the water can move in any direction. Dr. Jansen noted that all the groundwater can be influenced by pumping, especially the local water table. Manager Lythjohan pointed out that the analysis revealed that the extent of the plume had not been accurately identified because the testing was strictly done on existing private water wells. The letter also explained that water wells are not the best way to identify the extent of a plume because of the way they are dug, and there are also not enough wells in any direction to truly identify the extent of the plume. Public records provide a rough idea of what is there and where the contamination traveled in the 1990s, but it is not known where it is today. He added that the DNR recently contacted Mercury Marine to ask for installation of additional groundwater monitoring wells to try to delineate where the contamination plume is.

Manager Lythjohan noted that the basic chemical found in the groundwater originally was vinyl chloride, a degradation of chlorinated solvents, such as trichloroethene or perchloroethene. This is a carcinogenic—a Volatile Organic Compound (VOC)—and found in several of the monitoring wells. Manager Lythjohan felt it was important to note that the contaminates were not only found south and east of the Prochnow Landfill, but also north, northeast, and somewhat northwest as well, though not as far.

Manager Lythjohan explained what concerned him the most after reading Dr. Jansen's letter was a reference to a new chemical that had been found but not articulated until this point. The chemical is called Bis, which is a byproduct of plastic manufacturing. This was found in levels that exceeded the allowable standard, most notably 20 times the standard, at a well north and west of the site. Dr. Jansen allowed that this may indicate another contamination source other than the Prochnow Landfill.

Manager Lythjohan reviewed Dr. Jansen's conclusions, where he urges that additional groundwater testing be done and the extent of the plume be identified. Dr. Jansen emphasizes that groundwater can be influenced by pumping of wells; the more wells added to an aquifer could actually bring contamination one direction or another by pumping. There is reason for concern and the public needs to be informed.

Manager Lythjohan added that the last wells dug in the extraterritorial jurisdictional area had to obtain a permit from the DNR because they were within a certain number of feet from a landfill. Each well had to have a spectrum analysis for chemicals. This is done only once—when it is installed. No other ongoing testing is required. The Light & Water Utility does a full spectrum chemical analysis and tests their water four times a year at considerable expense to insure the quality of the drinking water.

Commissioner Kaiman asked how many wells have already been established in the area, if any of them are shared, and what the exact depths of the wells are. Manager Lythjohan noted the information could be requested from the DNR.

Council Member Beck understood that if a location was tested and was found free of chemicals, digging a well and pumping water from it could literally draw contaminates into the well. In addition,

without testing, no one would know about the contamination. Manager Lythjohan responded that it could, but no one knows for sure what will happen.

Commissioner Emmerich asked if no pumping occurred, would the contaminants be contained. Manager Lythjohan explained that the chemicals are in the soils and are naturally drawn into the water when rain percolates through the ground.

City Attorney Vance advised that the DNR issued permits to the 5 Corners strip mall and Grafton State Bank.

Mayor Myers advised that there are currently only two wells at the site, but the proposed development density of the area was more appropriate for a city or a village than a town. The Town is proposing to support with wells and septic systems high-density commercial, high-density multi-family housing, apartment buildings, etc. The City staff and elected officials became concerned due to the question of a safe water supply. Mayor Myers noted that he hoped the development plan created by the Town's consultant was to be discussed by JETZCO and the Plan Commission, but the letter from the Town's administrator indicated they believed since they had a plan, the City should have a plan before convening a meeting.

Planner Censky added that when he served as staff support for the City of Mequon when it established its JETZCO with the Town of Grafton, there was no preconceived land use plan prior to the first JETZCO meeting. The first meetings were an exchange of land use philosophies of the two communities, then analyzed what uses were in the area and then formulated a plan, which took several months. A compromise was achieved through the JETZCO process.

Mayor Myers added that the purpose for the City of Cedarburg to establish a JETZCO is to work cooperatively with the Town. As a City, it is necessary to move forward with the planning process because the concerns regarding the area are not going to go away. Avoiding discussion regarding the concerns will not make them go away. The Plan Commission would have to decide what their next step would be, perhaps making a recommendation to the Common Council to zone the extraterritorial area agricultural with a minimum lot size of 35 acres.

City Attorney Vance advised that the Plan Commission could not take action to rezone the area. The area is now frozen at the Town's zoning and the only body that can change it is JETZCO.

Mayor Myers countered that the Town JETZCO members would not meet without a proposed plan on the table. City Attorney Vance answered that the City has effectively frozen the zoning in the extraterritorial area for the next two years. That means it stays the way the Town has zoned it, which is all conditional uses. No unilateral action by the City is permitted.

Mayor Myers suggested that no action be taken, but a plan be presented for action at the end of the two-year period.

Planner Censky offered to put together a land use plan as a staff member representing what the City felt was appropriate to initiate discussion.

City Attorney Vance reiterated that any changes to the current extraterritorial zoning has to be proposed by the JETZCO. Any motions about changes and any tentative recommendations to the Council, has to be proposed by the JETZCO.

Commissioner Kaiman suggested that an appeal be made to the three Town JETZCO members, who did not show up for the meeting, that their attendance is required. Whether it is a staff recommendation or whether it comes in some other form, it is mind-boggling that the City cannot get them to the table. As the Mayor stated, the issue is not going to go away and, for at least a two-year period, whatever the Town wants to accomplish will not happen until they come to the table. The City is trying to get the Town to become involved in discussions, whether or not a recommendation is made. The City is meeting its obligation and needs the Town to meet its obligations.

Council Member Beck expressed concern that with staff drawing up a plan, the City and the Town would be working independently on their individual plans before coming together for discussion. The Plan Commission and JETZCO should be working cooperatively on a single plan.

City Attorney Vance added that the Statute is unambiguous in stating that the entire Plan Commission shall participate with the joint committee with the preparation of the plan and regulations or amendments thereto.

Mayor Myers agreed that the Statute is very clear, but if the Town insists on a plan, the City can present a plan with all agricultural zoning with minimum 35-acre land division and present to the Town JETZCO members in order to win their attendance at a JETZCO meeting. If the JETZCO does not convene and come to some agreement on how the area is to be developed, the plan would be imposed on the extraterritorial area by the City at the end of the two-year period.

City Attorney Vance noted that the Statute also states that such vote shall be deemed action taken by the entire Plan Commission. Any changes to the way that plan is zoned, right now, has to go through JETZCO. It says no unilateral action by the City is permitted.

Mayor Myers advised that he was not suggesting the City change the zoning, but was only suggesting that the plan be presented as the City's future, if in fact JETZCO expires without the cooperation of the Town.

City Attorney Vance answered that the JETZCO is supposed to come up with tentative recommendation—only the JETZCO members. If the JETZCO expires, then the Town zoning applies.

Planner Censky asked if the Plan Commission could produce tentative recommendations to the JETZCO that the extraterritorial area will be a holding area, what is there is what you get, and any future development is going to comply with the one unit per 35-acres, to satisfy the request from the Town.

Council Member Beck believed that JETZCO should be recommending to the Plan Commission, not the other way around. The demand by the Town that the City produce a plan was not appropriate and the Plan Commission and JETZCO should be cooperating on a plan. Her question was whether or not the Town JETZCO members are legally bound to meet with the City Plan Commission once JETZCO is formed.

City Attorney Vance answered that the Town JETZCO members are supposed to attend the meetings.

Mayor Myers stated that he was bothered by the fact that JETZCO is supposed to be an independent committee and obviously the Town Board has made the decision for the supposedly

independent Town JETZCO members appointed by the Town Board. He pointed out that the letter was signed by the Town Administrator and he is not part of JETZCO.

City Attorney Vance restated that when JETZCO functions, they are an independent committee. They function within the purview of the Plan Commission.

Commissioner Kaiman suggested that a reminder be sent to the Town JETZCO members in the form of a legal opinion.

City Attorney Vance noted that the Town Board has their own attorney who counseled them to excuse themselves from the meeting. She advised that the Town Board meeting agenda was questionably posted for a meeting on July 5, 2006. Mayor Myers explained that a closed session was added to the end of the meeting agenda, and was listed as discussion about litigation, but did not identifying the nature of the litigation. He was assuming the legal opinion was provided at that time.

Commissioner Kaiman considered the letter to Planner Censky from the Town Administrator as outlining some form of road map that would get them to the table and questioned why Planner Censky should be prevented from responding to the letter in order to get the Town JETZCO members to the table.

Commissioner Kaiman suggested that Planner Censky simply respond to the requests for clarification of the internal workings of the Committee.

Mayor Myers added that he did not think the Town's demands complied with the Statute and the City should not be responding to it. If the JETZCO members decide to have an alternative meeting date, as they did in Mequon, that is between the six members to make that decision. It is not to be made outside of the JETZCO.

Commissioner Kaiman agreed, explaining that he could see Planner Censky respond by thanking the Town for the letter and that, most definitely, the JETZCO would decide internally how to appoint a chairperson, who and when meetings will take place, what procedure shall be used when establishing future agenda. Come to the next meeting and discuss these items. No need to be more specific than that.

Commissioner Emmerich, as a JETZCO member, asked if the interpretation of the Wisconsin Statute by Town Administrator Smith is inaccurate. City Attorney Vance responded that the language of the Statute pretty much speaks for itself. She pointed out that the Town has ignored the ordinance and granted a conditional use permit. The Statute says if the governing body of the City adopts the resolution (that Cedarburg adopted), it shall direct the Plan Commission to formulate tentative recommendations, but when the Plan Commission is engaged in the preparation of the plan and regulations, a joint extraterritorial zoning committee shall be established. The entire Plan Commission shall participate with the joint committee in the preparation of the plan and regulations or amendments thereto. City Attorney Vance did not see any ambiguity and that no unilateral action by the City is permitted. The joint committee prepares the zoning plan and the regulations in conjunction with the City Plan Commission. Conjunction can be defined, but it is conjunction with the City Plan Commission.

Vice Chairperson Burgoyne suggested that the City give the Town of Cedarburg the benefit of the doubt that they did not seek counsel as the City did and did not read the Statutes as clearly as they are stated, and give them a letter back indicating the procedure the City has to follow based on City Attorney Vance's direction.

City Attorney Vance reported that the City's administrator did speak with the Town administrator, who advised that the Town Board did obtain advice from their legal counsel.

Planner Censky noted that the discussion occurred the morning of the Plan Commission meeting and the Town Administrator basically repeated the language in the Town letter. Town Administrator Smith indicated that their attorney advised them to send the letter.

City Attorney Vance explained that the extraterritorial zoning committee was created to make tentative recommendations and it would not make sense for the Plan Commission to be required to make tentative recommendations prior to the JETZCO meeting.

Council Member Beck agreed that the Plan Commission should not be making any recommendations.

Commissioner Emmerich pointed out that a JETZCO chairperson has already been appointed by the City and the Town is asserting that a chairperson needs to be selected solely by the JETZCO members. It appears the Town is setting an agenda and the initiative should be coming from the municipal and the authority lies with the municipality.

Commissioner Kaiman suggested that the City research the legal methods that we have to bring the Town to the table. Mayor Myers advised that it would be up to the Common Council to make that determination.

Vice Chairperson Burgoyne noted that one of the things the Plan Commission is dealing with is the conditional use that was granted by the Town, which is a question of legality. He asked if the Town received the analysis report that was presented by Manager Lythjohan, because that is a safety issue that is clearer in the Plan Commission minds than it was two months ago, as a basis of why the City is going ahead with the JETZCO process.

Planner Censky questioned that if the Town's argument is that they did not have tentative recommendations, doesn't the simple fact that the City exercised its extraterritorial zoning because of a plan they had in place suggest that the City has made tentative recommendations that the Town's plan is too intense?

Mayor Myers interjected that obviously the issue is that the City does not agree with the Town plan—it is not a secret—and the JETZCO was formed in order to come up with a land use and zoning that is more reasonable and works in the area.

Mayor Myers advised that he told the Town Board chairman, correctly, that the City wants to work with the Town on the land use plan and zoning; he got it first hand out of my mouth.

Vice Chairperson Burgoyne asked if the next step was to make a recommendation to the Council and the Council has to decide the alternatives. Mayor Myers responded that he did not believe the Plan Commission should make a recommendation. This was just a discussion on the issues that lead the City to create the JETZCO.

City Attorney Vance advised that there is no case law on this particular circumstance.

Mayor Myers noted that a JETZCO meeting was scheduled and he wanted to make some of the points why it was scheduled; why it is not occurring.

Commissioner Kaiman opined that it was amazing the disservice that was being done to the City and Town by refusing to meet.

Council Member Beck stated that she would like the newspapers to be aware of the circumstances and understand that the Town is not coming to the board on this. The issue is so important, not only as a safety issue, but a density issue and the Town is not coming to the table. She would like the papers to make the public aware of the situation.

Commissioner Emmerich concurred that the City has taken initiative by forming the JETZCO and the refusal by the Town to participate is just posturing. Mayor Myers cautioned that the City can only guess what the Town's motivations are.

Mayor Myers summarized that it was not appropriate for the Plan Commission to devise a plan before JETZCO meets. Commissioner Kaiman asked if it would be a sign of good faith to at least set a tentative future meeting date. Mayor Myers confirmed that the next JETZCO meeting would be the next Plan Commission meeting. Planner Censky agreed to advise the Town JETZCO members of the next meeting date of August 7, 2006.

Mayor Myers added that if the August 7 meeting date does not work for the Town of Cedarburg, the JETZCO could discuss an alternative meeting that would allow the Plan Commission to attend exactly as the Statute states. If the Town has concern about these issues, they should come to the meeting. This is where the questions should be answered, not at a Town Board meeting in closed session.

CONDITIONAL USE GRANT REQUEST TO CONSTRUCT A 7,224 SQUARE FOOT ADDITION TO THE SOUTH SIDE OF EXISTING BUILDING LOCATED AT W59 N270 CARDINAL AVENUE – GEORGE GRAINGER/NORTH SHORE ACADEMY OF GYMNASTICS

Planner Censky noted that at the last meeting, Commissioners held a public hearing for conditional use consideration and granted concept approval of the applicant's expansion plans subject to the following:

- Submittal and Plan Commission approval of the grading, drainage, erosion control, and stormwater management plans.
- Submittal and Plan Commission approval of the detailed lighting plans showing the height, style and intensity.
- The property owner combining the two existing lots into one before issuance of a building permit.
- Staff to review the City's policy regarding the extension of the public sidewalk across the frontage of this site.

In response, Mr. Grainger submitted detailed lighting and the stormwater management plans and he has slightly revised the site plan. In addition, public sidewalk extensions have been researched.

Planner Censky pointed out the revised site plan better reflects the City's desire for green space by proposing to construct a portion of his parking lot with "Geo Block," which is a permeable concrete mesh system where grass is allowed to grow through. The result is a maintained lawn appearance, which will support the over-flow parking needs of this use and will also have a beneficiary affect on the stormwater management as water can seep through into the ground in this area. The asphalt

surface will support 35 general parking stalls and 2 handicap stalls and the area of Geo Block will support 35 additional stalls for over-flow customers.

Planner Censky noted that the parking lot would be lit with directional luminaries directing light downward to prevent light trespass. There would be 4 double-throw and 3 single-throw pole mounted fixtures illuminating the parking lot, mounted at a height 20 feet above grade and each will be of the EMCO Avalume series with a 400 watt metal halite lamp.

Planner Censky continued that the site plan proposed a detention pond located off the southeast corner of the parking lot, which is intended to collect, store and then slowly release storm water into the existing downstream drainage system. Director of Engineering & Public Works Tom Wiza has reviewed the storm water management plans and reports that they do comply with City requirements.

Planner Censky reported that the City's sidewalk policy is a common sense policy where public sidewalk is required if a public need for the extension of the sidewalk is demonstrated. Typically, public sidewalks would be installed at the time of initial development; however, sidewalks were apparently not required at initial development presumably because of the business/industrial-type land uses up and down Cardinal Avenue where pedestrian traffic is minimal. He advised that Commissioners would need to determine if there is a public need to require the sidewalk be extended across the full frontage of the property. The property directly to the south is the martial arts studio, which at times can be busy. Planner Censky noted that the only sidewalks that exist along Cardinal Avenue are along the frontage of this property to the driveway and across a portion of the frontage of the property across the street.

Commissioner Kaiman hoped that the Commissioners would agree to extend the sidewalk, because the area is used mainly by parents and kids, and a sidewalk would provide a little bit of a buffer between the street and pedestrians. He noted that the City insisted on installation of a sidewalk on Lincoln Boulevard at the north property line, where there was no sidewalk, and considered it a wise move.

Commissioner Kaiman questioned whether Geo Block was used anywhere else in the City. It was noted that Cedar Gardens/Cedar Springs installed it for emergency access.

Action:

Commissioner Kaiman moved to approve conditional use grant request to construct a 7,224 square foot addition to the south side of existing building located at W59 N270 Cardinal Avenue subject to:

- The property owner combining the two existing lots into one before issuance of a building permit.
- The storm water management system, grading work and erosion control facilities shall be installed in accordance with the approved plans and City Engineer's oversight.
- The existing sidewalk be extended along Cardinal Avenue to the south property line.

Council Member Beck seconded the motion.

Council Member Beck complimented Mr. Grainger on the attractive design of the addition.

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

Planner Censky would clarify with the City Engineer on whether Mr. Grainger or the City would install the sidewalk. Mayor Myers advised that the City has a sidewalk repair program throughout the year and perhaps the project could be incorporated into that program.

FINAL SITE PLAN APPROVAL FOR PROPOSED 10,820 SQUARE FOOT MULTI-TENANT BUILDING LOCATED AT W61 N297 WASHINGTON AVENUE AT THE SOUTHWEST CORNER OF WASHINGTON AVENUE AND LINCOLN BOULEVARD – BLOCH APPLIANCE

Planner Censky advised that Ray Haen of Quasius Construction, Inc., representing property owner Eric Bloch, was seeking approval of site, landscaping, exterior lighting, and architectural plans for redevelopment of his building at the southwest corner of Washington Avenue and Lincoln Boulevard. He reminded Commissioners that they had very positive comments on the conceptual plans reviewed on March 6, 2006 and had encouraged Mr. Haen to return with fully detailed plans. The immediate corner site, which supports Bloch Appliance, would be combined with the adjacent site to the south for a total site area of 35,425 square feet on which they propose a 10,820 square foot building. The lower level 8,100 square feet of the building would support office, service and retail uses and the second floor would be strictly office.

Planner Censky explained that, unlike the proposed redevelopment of the former Clark Gas Station site where the PUD Overlay District is being used to provide flexibility in design, the proposed plans were designed to comply with the requirements of the B-2 base zoning district. Since the project is south of the intersection where existing development is not of the same historic importance as that to the north of the intersection, the project is designed to be more consistent with the look of nearby development to the south. To achieve compliance with the B-2 District requirements, the building will be set back from the corner with parking located in front. This project will be supported by 44 parking stalls, which by his calculations was deficient by 4 stalls. At the March meeting, however, Commissioners accepted the use of available nearby street stalls to make up for the onsite deficiency. The City Forester advises of an existing street tree that is near the south access drive and asks that the drive be shifted slightly to the north to avoid damage. This shift will result in the loss of one additional parking stall reducing the total number of stalls to 43. Access is provided at the far south end and the far west end, which will shift turning movements to and from this site farther away from the intersection than currently exists.

Planner Censky continued that the plans depict a building with a low sloping roofline with cupolas and functional dormers designed to be consistent with the newer development further south on Washington Avenue. The building will stand 27' 8" high to the roof peak and 31' to the top of the cupolas. The applicant proposes to use fiber cement lap siding on the lower level, with horizontal trim cement boards providing separation to the fiber cement shingle siding on the upper gable sections. The building will be covered with "Elk Prestige Weathered Wood" asphalt shingles. The colored rendering indicates the use of earth-tone shades of brown.

Planner Censky stated that, because of the location of the parking out front, it would be necessary to provide a good landscape buffer for the 5-foot green space around the periphery of the site and to screen the cars. A broken hedge of goldflame spireas is shown on the proposed landscaping plan to screen the parking lot from adjacent streets and foundational plantings would include reed grasses, mini honeysuckle globes, lilac bushes and daylily flowers. He understood that the developer and property owner will protect the tree line along the west property line to some extent, although there are various scrubs that should be removed. If that removal opens holes, additional landscaping will be necessary. According to Code, one tree for each 10 parking stalls is required but none are shown. To comply, Planner Censky recommended that Skyline locust trees be planted between the broken hedges along the street frontage and the developer explained the trees were intended to be depicted on the submitted plan. The City Forester reported that the offsite modification of the boulevard in the Lincoln Boulevard right-of-way will impact an Iowa Juniper tree, which will either have to be relocated or replanted at the developer/owner's cost.

Planner Censky continued that the site lighting plan depicts pole-mounted and building-mounted fixtures directing light downward. The pole fixtures are proposed at a height of 20 feet and each pole will support a Hilton Flat Lens fixture with a Metal Halide bulb. The building façade fixtures will be the Challenger Wall Sconce cut-off containing 70w or 75w Metal Halide bulb. As presented, this plan indicates minimal light trespass.

Planner Censky reported that City Engineer Wiza found the stormwater management plans to be in full compliance with the City's requirements. Onsite surface storm water would be directed to storm inlets where it would be collected and detained in underground storm sewer pipes and slowly released into the public storm sewers in Washington Avenue just south of Lincoln Boulevard.

In summary, Planner Censky stated that the proposed plan does not require a rezoning and meets the City's Code requirements.

Commissioner Kaiman suggested that the Washington Avenue access be limited to right-turn-only outbound traffic. He also suggested that the proposed Washington Avenue access may create a conflict with the north-bound left-turn-only lane and the Piggly Wiggly driveway.

Vice Chairperson Burgoyne agreed that there was a lot of congestion with the northbound left-turn-only lane and would also like to know where the Piggly Wiggly access was. Otherwise, he found the design very attractive and felt fortunate that both accesses were 115 feet from the corner.

Planner Censky noted that the Plan Commission could restrict the Washington Avenue access to right-turn-only exit for now. The developer would then need to provide additional information and petition at a later date to allow both exiting right and left turns. Planner Censky explained that the site plan was designed to keep the driveways as far away from the corner as possible.

Ray Haen, the architect, noted that they would be staking out the driveway's location and would come back to the Plan Commission if it appeared exiting left turns would not create a conflict.

Vice Chairperson Burgoyne added that the Plan Commission placed a similar restriction on another office building on the same block and approved a change several years later when the traffic impact of the site was known.

Action:

A motion was made by Vice Chairperson Burgoyne to grant final approval to the development plans for the site located at the southwest corner of Washington Avenue and Lincoln Boulevard subject to:

- Submittal of an official Certified Survey Map showing dedication of the 40' Washington Avenue right-of-way.
- The landscape plan should include a series of Skyline locust trees between the broken hedge treatment along the street frontage.
- Engineering review and approval of the grading, drainage, erosion and stormwater management plan.
- The applicant is responsible for the appraised value or replacement cost of the Iowa Juniper in Lincoln Boulevard.
- The Washington Avenue access drive is to be shifted slightly to the north away from the existing street tree.

- The Washington Avenue access drive be limited to right-turn ingress and egress only. The petitioner can provide additional information to convince the Commissioners that left turns be allowed.

The motion was seconded by Commissioner Kaiman.

Further Discussion:

Mayor Myers also agreed that the plan was very nice and would be a considerable upgrade to the corner. Vice Chairperson Burgoyne opined that the building would be very harmonious and compatible with existing development south of Lincoln Boulevard.

Commissioner Emmerich liked the design very much and urged that the west tree line be preserved as much as possible. Mr. Haen advised that they would prefer to retain the trees as a buffer to the adjacent apartments. Planner Censky noted that there was some invasive vegetation in the tree line that would have to be removed.

Continued Action:

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

REZONING RECOMMENDATION REQUEST FOR PROPERTIES LOCATED AT N49 W7907 WESTERN ROAD AND N49 W7805 WESTERN ROAD FROM TEMPORARY RS-1 TO PERMANENT RS-1 – CAROLYN ANDERSON

Planner Censky reported that Ms. Carolyn Anderson was seeking a rezoning recommendation from RS-1(temporary) to RS-1 for her 4-acre site located along the south side of Western Avenue just west of Wauwatosa Road. The property was annexed into the City in 2002 and was automatically zoned RS-1 (temp). The RS-1 Single-Family Zoning District requires a minimum lot size of 20,000 square feet or a density of 2.2 units per acre. The RS-1 Zoning District is consistent with the density limits of the zoning on the adjacent property to the south which was recently zoned RS-7(PUD) in support of the pending Prairie View Subdivision. In fact, the RS-7 and the RS-1 have the same minimum lot size requirement with the only difference being where these districts are used. The RS-1 District is used to accommodate single-family development served by public sanitary sewers, water supply facilities and the full compliment of improvements (i.e. curb and gutter, sidewalks, street trees, street lamps and storm sewers). The RS-7 District is intended for low-density single-family subdivisions or certified survey maps which do not necessarily provide the full compliment of urban improvements.

Planner Censky recommended that, since the RS-7 District was applied to the adjacent property and the applicant may be coming forth at a later date with a certified survey map to further divide the property, Commissioners should consider the RS-7 District here.

Action:

Vice Chairperson Burgoyne moved to recommend rezoning the properties located at N49 W7907 Western Avenue and N49 W7805 Western Avenue from temporary R-1 to permanent RS-7. Commissioner Schara seconded the motion.

Continued Discussion:

Commissioner Emmerich asked if the properties would then be connecting to City sewer and water. Planner Censky advised that those facilities will be provided as the adjacent Prairie View

Subdivision develops and they would be required to hook up within one year of those utilities becoming available.

Commissioner Kaiman announced that, although it was logical to recommend the rezoning considering what zoning exists adjacent to the property, he would vote in opposition to the motion because he voted against the development directly to the south.

Continued Action:

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

CONSULTATION REGARDING PROPOSED SINGLE-FAMILY DEVELOPMENT LOCATED ON THE VACANT PARCEL OF LAND LOCATED BEHIND W61 N378-N392 WASHINGTON AVENUE – ROBERT ZELLMER/TIM GESCHKE

Planner Censky noted that Robert Zellmer, the property owner and Tim Geschke, the developer, were seeking consultation regarding a proposed single-family project located on the vacant 2.5-acre parcel behind W61 N378 through W61 N392 Washington Avenue. The project would result in 6 or 7 new home sites located along a private access road from either Washington Avenue or from Hilbert Avenue. He reminded Commissioners that a similar request was considered on January 6, 2005 and, while there was support for the concept and direction given regarding home sizes, Commissioners did express concern about accessing Washington Avenue because of traffic congestion issues.

Planner Censky continued that the adjacent home fronting on Hilbert Avenue had been acquired to provide options to alleviate those concerns. The acquisition not only provides an option to address the access issue, it also provides a means to connect to the sanitary and storm sewer system located in Hilbert Avenue with gravity flows. Several concepts were submitted for the Plan Commissioners to review and provide direction on which was preferable.

Planner Censky advised that it is likely that any development of this site will require a rezoning to introduce a Planned Unit Development (PUD) Overlay, since, among other things, the private drive is proposed to access the site between two existing two-family structures, which will require a modification to the required 25' building setback. The proposed setbacks along the interior street range from 16' to 25'; similar to the modification that was approved through the PUD zoning for the Bridge Commons Condominium development. If a modification to the 25' setback is not permitted, the concepts showing access to Washington Avenue between two existing structures are not approvable because it would render those structures nonconforming.

Council Member Beck recalled that the size of the homes were an important part of the January meeting discussion so that the new construction was not huge in comparison to the other houses in the area.

Tim Geschke, of ASI General, Inc., explained that he had been hired by the property owner and was working with Architect Louis Wasserman to develop a plan acceptable to the neighborhood. He noted that their intent was to match the scale of the adjacent homes. He added that designing the homes was going to be the fun part of the project. Before actually designing the homes, three schemes were being submitted for discussion. The acquisition of the home site on Hilbert Avenue was in response to some Commissioner's concerns with a Washington Avenue access.

Mr. Geschke reviewed the three concept plans, noting that they were aiming for 7 units, to minimize the amount of road by combining or connecting garages, and to provide a certain amount of common green space with rain gardens to absorb stormwater at the east end of the project. He advised that the setbacks on the plans were between 16' to 25'. Mr. Geschke added that he had driven through the Bridge Commons Condominium development, which he found very nice and where he received considerable input from the residents.

Council Member Beck asked if the view from Washington Avenue would be the sides of the new structures. Mr. Geschke answered that the existing duplexes would block the view of the development and Mr. Zellmer owns three homes on Washington Avenue and one on Hilbert Avenue adjacent to the vacant land.

Vice Chairperson Burgoyne noted that the home sizes in the proposals were described as typical cottage size—2,500 square feet. Mr. Wasserman interjected that figure was plus or minus and if the Commissioners decided they wanted the units smaller, they would be able to accommodate. Vice Chairperson Burgoyne recalled the unit size of 2,200 square feet based on data collected from neighboring homes was on the average or high side. Council Member Beck and Commissioner Kaiman confirmed that 2,200 square feet was on the high side. Vice Chairperson Burgoyne recalled from previous discussions that the acceptable home sizes ranged from 1,800 to 2,200 square feet.

Planner Censky added that the site was viewed as an infill lot and the sizes of homes in an infill development must be consistent to the sizes of adjacent development. Planner Censky responded to Mr. Geschke that the square footage was actual square footage, not the footprint. Mr. Geschke advised that they had no problem with the preferred home sizes. In response to a question from Planner Censky, Mr. Geschke noted that the attached housing was just to generate comments and to demonstrate the effort to maximize green space. He stated that it would be preferable to create individual lots because of the paperwork involved in creating a homeowners association.

Vice Chairperson Burgoyne asked if the cul-de-sac was the same size as that at the Bridge Commons Condominiums, and Mr. Geschke responded that it was smaller at 70'. He emphasized the developer's preference for green space as opposed to hard surfaces to create a better feel to the project. They felt that cottage or bungalow homes would be an appropriate sensitively-scaled approach and will bring renderings of these homes after they received comments on the overall development.

Vice Chairperson Burgoyne asked if the project would be restricted to individuals of 55 years or older, and Mr. Geschke responded that the type of development approved by the City would guide them regarding that type of decision.

Mr. Wasserman expressed his preference for Concept C (Cottage Green or Cottage Courtyard), which is a 120-year old concept that is becoming popular and would make a great deal of sense in this location. Mr. Geschke noted that the Cottage Courtyard scheme would most likely require that the house on Hilbert Avenue be removed, which would make the project financially harder to make work. It would also be more difficult because of the need to create association rules. Mr. Geschke noted, however, that a lot of this type of development is occurring, often in the infill situations, and are very successful. If access were provided from Hilbert Avenue, the house would have to come down, unless the driveway was used purely as an emergency access.

Mr. Geschke continued that residents would park their vehicles in a parking area and walk to their home through the green area, which does require some imaginative marketing. Mr. Wasserman added that the Cottage Green type of development is attractive to professional females aged 35 to

55 who are looking for a small, intimate-scaled home that is also secure. Even though the parking is not attached, the idea of a community of separate homes that share a public space that each property shares in ownership is very attractive to that demographic, even though people would have to walk 100 feet to Unit 6.

Mr. Wasserman also advised that the design would treat stormwater as a resource rather than a problem by directing it to a rain garden that will provide a very soft and comfortable edge to the surrounding neighborhood to the north and to the east. He would also be happy to reduce the size of the private drive from 25'.

Council Member Beck expressed her preference of the Cottage Green concept. Commissioner Kaiman liked the access from Hilbert Avenue shown in the Cottage Green concept—there would be no way he could support anything that just pushed all the traffic onto Washington Avenue.

Mr. Geschke explained that a neighborhood information session would be held once they have an acceptable plan to engage the property owners in the process and incorporate their comments. In his point of view, the neighbors have enjoyed a park in their back yard for a long time at no cost to them and he knows they will not be happy to see homes built there.

Council Member Beck urged that a design be acceptable to the Plan Commission before approaching the neighbors, because there will be many requests for changes which could cause the project to fall through.

Mr. Geschke understood that the PUD Zoning would also require a public hearing to be held. Planner Censky advised that the public hearing would be held at the Common Council level, but suggested that a neighborhood meeting be held earlier to allow them to be part of the project and possibly win their support. If the site were developed strictly under the RS-5 zoning, a home would have to be removed on Washington Avenue in order to meet setback requirements; and if the project meets all the other requirements of the RS-5 District, a public hearing would not have to be held. However, the site would still be considered infill development and neighboring property owners would be notified that the Plan Commission would be reviewing the plan.

Council Member Beck thought that taking a house down on Washington Avenue would be an issue. The property owner, Bob Zellmer, advised that he preferred that no houses were removed, because this is a very monetarily-tight project.

In response to a question from Mr. Zellmer, Planner Censky advised that if a unit were removed, the setback requirements could be met internally, but the setbacks for the Washington Avenue access would still be non-conforming.

Vice Chairperson Burgoyne explained that using PUD zoning is advantageous to both the City and the developer. Setbacks, road width, size of the cul-de-sac, etc. are flexible under the PUD zoning. The infill status provides the City with more control to assure the development is compatible with existing neighborhoods. The public hearings are valuable and are not to be feared if all the homework has been done. He added that this particular neighborhood is challenging and agreed that an acceptable plan and home design should be sought before approaching the adjacent property owners, with a second option available.

Planner Censky advised that one of the major neighborhood concerns was the attached housing; they wanted housing styles and sizes similar to their own.

Mr. Geschke believed that the access to Washington Avenue was the most logical, noting that the developer had control of the homes on Washington Avenue. The house would definitely have to be removed if access were created on Hilbert; otherwise it would be very close to the existing homes and homes would suddenly be situated on a roadway. Mr. Zellmer added that the access to Washington Avenue would be no different than Jackson or Wurthmann.

Mayor Myers advised that if the access were created on Hilbert, the traffic would access Washington by Jackson or Wurthmann anyway. He noted that people buy homes in the area with the understanding that they pull out onto Washington Avenue.

Council Member Beck noted that the City has approved several projects to the south that will be generating traffic and this project proposes only seven houses. Vice Chairperson Burgoyne recalled the concerns of traffic generated onto Bridge Road by the Bridge Commons Condominiums that did not materialize.

Commissioner Kaiman stated that an access onto Hilbert would promote use of the controlled intersection at Lincoln Boulevard and that access onto Washington Avenue is impossible at Jackson Street and difficult at Wurthmann Street. He would, however, support a plan with access both on Washington Avenue and Hilbert Avenue.

Mayor Myers advised that he would have to see the house on Hilbert Avenue before agreeing it should be torn down and also see how close the other houses would be to the access street frontage before making that decision. It is not good policy taking properties off the tax roll. He added that there are so many houses that access Washington Avenue every day without problems and the proposal is such a low density project.

Planner Censky pointed out that the access proposed onto Washington Avenue was mid-block, which was a good location with a good line of site. Commissioner Kaiman questioned where that access was in relation to the commercial property access across the street. Mr. Geschke advised that the other access points in the surrounding area would be depicted as they further develop their plans.

Commissioner Kaiman noted that a paid crossing guard is stationed at the Washington Avenue/Jackson Street intersection because it is not a safe situation.

Vice Chairperson Burgoyne suggested that the road surface might be reduced and still meet the Fire Department's requirements if access was provided both on Washington and Hilbert.

REVIEW AND POSSIBLY RECOMMEND AMENDING SECTION 13-1-54 TO RECLASSIFYING COCKTAIL LOUNGES, NEW AUTOMOBILE SALES, RESTAURANTS AND BOWLING ALLEYS AS CONDITIONAL USES AND ADDING CERTAIN NON-INTENSIVE USES AS PERMITTED USES BY RIGHT IN THE B-2 COMMUNITY BUSINESS DISTRICT

Planner Censky noted that the revised draft ordinance includes clarification regarding medical clinics versus medical offices and some clerical changes. With respect to the difference between medical offices and medical clinics, he found that they are one in the same. The ordinance now only refers to clinics in the text and lists them as permitted uses by right along with other health care facilities. TV and small appliance repair shops have been added and car washes were removed from the by-right category. If recommended, a public hearing will be held before the Common Council before final action.

Action:

A motion was made by Council Member Beck to recommend amending Section 13-1-54 to reclassify cocktail lounges, new automobile sales, restaurants and bowling alleys as conditional uses and adding certain non-intensive uses as permitted uses by right in the B-2 Community Business District. The motion was seconded by Commissioner Schara.

Continued Discussion:

Vice Chairperson Burgoyne questioned whether kennels or animal hospitals should be farther than 100 feet from residences. Planner Censky responded that kennels and animal hospitals were listed as conditional uses and if Commissioners agreed that 100 feet was not sufficient, they may on a case by case basis modify the distance. Mayor Myers continued that many kennels and animal hospitals kennel the animals strictly inside the building.

Commissioner Kaiman again opined that health care facilities should be a conditional use on the basis of what is considered to be health care these days. That way the City would have some control on what someone would want to call health care.

Mayor Myers noted that item 28 listed dental clinics, medical clinics, etc. He cautioned against having the Plan Commission determine what legitimate medical treatment is and what is not, noting that massage therapy is common for athletic injuries and acupuncture is a recognized medical treatment. Commissioner Kaiman interjected that item 28 is written that health care facilities include the listed items and would prefer to specifically list those recognized medical care facilities.

City Attorney Vance advised that conditional uses are based on what would disturb the neighborhood, not the type of clientele the business would attract.

Planner Censky noted that if a use were proposed that was not included on the list, the petitioner would be required to provide a written description of that use. Then the City's Code requires that the use is reviewed by the City Attorney or Plan Commission to determine if the use is appropriate.

Vice Chairperson Burgoyne recalled that licensed massage therapy went through that process years ago when that type of health care was not yet as well accepted.

Continued Action:

Vice Chairperson Beck agreed to Commissioner Kaiman's proposed amendment to the motion to add a colon, eliminate the word "including" and add acupuncture to the list of permitted by right uses. Commissioner Schara seconded the amendment as amended. The motion carried without a negative vote, with Commissioner Brown excused.

REVIEW AND POSSIBLY RECOMMEND AMENDING SECTION 13-1-22 REGARDING ARCHITECTURAL REVIEW PRINCIPLES, STANDARDS, AND PROCEDURES TO CLARIFY INFILL LOT STATUS

Planner Censky explained that Section 13-1-122 of the Zoning Code defines infill lots as single vacant lots located in a predominately built-up area, which are bounded on two or more sides by existing development or any lot which contains an existing building which will be removed and replaced with a new building. The intent of the infill code is to ensure that a new building fits harmoniously with its surroundings in terms of size, architectural style, placement, etc., and it establishes the Plan Commission as the decision-making body to make that judgment call.

Planner Censky asked that the Plan Commission clarify the point when the infill status of a lot is discontinued. An interpretive reading of the Code would suggest that this point is reached when an occupancy permit is secured by the property owner. Once building plans have been approved for an infill lot, the owner secures a building permit and then constructs the home in accordance with the approved plans; the home then harmonizes with the surrounding homes. At this point, by definition, the status of the lot changes because it is no longer a vacant lot, but rather contains a building that is consistent with neighboring structures. Because an occupancy permit is required, staff feels that this date certain should be used as the point when the infill status ends.

Council Member Beck disagreed with ending the infill status. She felt it would be very easy to build a home on an infill lot that is as big as you can get it and then the next year get approvals to add even more because there are no hoops they have to jump through.

City Attorney Vance advised that the City has to do some definition, otherwise it was legally unenforceable anyway. There has to be some ending point for the infill status.

Vice Chairperson Burgoyne added that the Plan Commission decides if infill construction is harmonious, compatible design-wise, architecturally and aesthetically pleasing to the neighborhood the first time it is built. Whether an addition is construction is added or not does not matter, it is for the Plan Commission, up front, to catch it. Then the Commissioners are basically reclassifying that structure, or that neighborhood (such as the proposed Cottage Green), as just being part of the neighborhood. The lot is filled and part of the neighborhood.

Planner Censky pointed out that even if the adjacent homeowner decides to double its size, staff at some point, makes a discretionary call. If staff feels it now does not harmonize, the building permit will not be issued and the petitioner has to appeal to the Plan Commission.

Mayor Myers asked what ordinance compels staff to deny a building permit and was informed that in the early 1990s, the Plan Commission directed that any building permit request that seemed significantly unusual or could change the character of a building be submitted to the Plan Commission for review and approval.

Planner Censky added that so far, City staff has been able to work with architects and builders to make sure improvements harmonize with the neighborhood. As an example, a building was burnt down on Evergreen Avenue, and the property owner submitted a plan that was totally unacceptable for replacement. Staff was able to work with him to come up with a design that closely fit the neighbors' homes.

Planner Censky continued that a date certain is needed so that the City is treating similar structures the same way.

Vice Chairperson Burgoyne pointed out that there are only a few infill lots left. Council Member Beck felt that the opportunity exists for people to tear down buildings and put up anything they want. Planner Censky responded that if a home is razed, the lot is then considered an infill. Commissioner Kaiman added that someone could decide to partition one of the several unusually long lots that exist in the City. City Attorney Vance noted that all lot development has to have street frontage. Planner Censky noted that land divisions require Plan Commission approval and access has to be shown for that approval.

City Attorney Vance stated that the City has to absolutely have an ending point for a home's infill status. It cannot be an infill lot forever; it is not an enforceable ordinance.

Action:

Vice Chairperson Burgoyne moved to recommend amending Section 13-1-122 to clarify the end of infill status is when an occupancy permit is secured by the property owner. The motion was seconded by Mayor Myers.

Further Discussion:

Commissioner Emmerich asked what the difference was between a building permit and an occupancy permit. Planner Censky explained that a building permit is taken prior to any construction. The occupancy permit is issued when construction is completed and the home is ready to be occupied.

Continued Action:

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

REVIEW AND POSSIBLY RECOMMEND AMENDING SECTION 7-2-17 TO REDEFINED APPROVAL PROCESS FOR REQUESTS FOR BEER GARDEN LICENSE REQUIRED FOR OUTDOOR CONSUMPTION AT CLASS "B" PREMISES

Planner Censky noted that, at the June meeting, the Plan Commissioners directed staff to clarify the beer garden license ordinance to define a more reasonable and logical process involving both the Plan Commission and the Common Council, with Landmarks Commission input when appropriate. The current Code requires Council approval of the license, with Plan Commission and the Police Chief's approval of the fence and any other measures to control the operation of the beer garden which was inconsistent with the standard process followed for any other use. He added that staff was also asked to change the name from "Beer Garden" to a more universal name.

Planner Censky reviewed an option to reclassify beer gardens as conditional uses and make them subject to that approval process. The Plan Commission may authorize conditional use permits after review and public hearing provided that the use is found not to be hazardous, harmful, offensive, or otherwise adverse to the environment or the value of the neighborhood or the community. While the process does involve a public hearing, the approval is determined by the Plan Commission and does not require Common Council input. Although this was a viable option, Mayor Myers recognized the Council's desire to make the final decision on these requests, and this option was eliminated.

Planner Censky advised that the second option requires input from the Plan Commission over the entire operation rather than having their input solely over the fence, and then provide a recommendation to the Common Council that the petition be granted as requested, modified, or denied. This change also recognizes that the Police Chief's input will be part of staff's review prior to Plan Commission consideration and the Code reference to him has been removed.

Planner Censky pointed out that rather than referring to these outdoor areas as "Beer Gardens," which doesn't seem to apply in all situations, this change reflects the use as "Outdoor Alcoholic Beverage License." All petitioners will be required to provide the same information as before describing the outdoor seating area, the nature of fencing or other measures intended to provide control over the operation, and verifying that the area of the outdoor use is not greater than 50% of the gross floor area of the adjoining licensed premise. The outdoor activity will also continue to be at least 100 feet from a structure used for residential purposes.

Mayor Myers questioned whether the Chief of Police should be making these decisions. City Attorney Vance advised that the Chief of Police is not a legislative body and should not be making these decisions, so he was removed from the revised ordinance.

Commissioner Kaiman agreed with the proposed procedural changes, but objected to changing the name. Mayor Myers noted that he had requested the change because the phrase "Beer Garden" was misleading; it is not a beer garden, it is an outdoor seating area. Planner Censky added that the proposed name change reflects the license issued by the Clerk's office.

Mayor Myers asked what procedure would a restaurant that does not serve alcoholic beverages follow to create an outdoor seating area. Planner Censky responded that restaurants in the B-2 District would be conditional uses and an outdoor seating area would need to be approved during that process.

Action:

A motion was made by Council Member Beck, seconded by Vice Chairperson Burgoyne, to recommend amending Section 7-2-17 as shown in the draft ordinance to require Plan Commission review of all aspects of an Outdoor Alcoholic Beverage License request and provide a recommendation to the Common Council and remove any reference to Police Chief review. The motion carried without a negative vote, with Commissioner Brown excused.

REVIEW AND POSSIBLY RECOMMEND AMENDING SECTION 13-1-240(B)(122) TO CLARIFY WHICH IS THE REAR YARD ON A DOUBLE-FRONTAGE LOT

Planner Censky explained that the Code permits accessory structures only in rear yards. However, for double-frontage lots, the Code does not establish a rear yard but rather identifies both frontages as street yards. While one could use common sense to establish which yard is the front and which is the rear yard, the Code does not provide for such discretion; and, consequently, staff is unable to issue permits for accessory structures on double-frontage lots.

Planner Censky reviewed draft language which identifies the yard for which the home is addressed as the front yard and the rear yard without an address for double-frontage lots. If recommended, a public hearing would be scheduled before the Common Council for final action.

Action:

Council Member Beck moved to approve amending the Code to delineate the front yard as the addressed yard. The motion was seconded by Vice Chairperson Burgoyne and carried without a negative vote, with Commissioner Brown excused.

CLARIFY SETBACK REQUIREMENTS FOR ACCESSORY STRUCTURES IN THE REAR YARD OF A DOUBLE-FRONTAGE LOT

Planner Censky noted that the Code needed clarification regarding the setback requirements from the street right-of-way for accessory structures on a double-fronted lot. The current setback requirements as set forth in Section 13-1-101, allow the location of accessory structures up to 3 feet from a property line in the rear yard. This could place an accessory structure only 3 feet from a street, where the Code requires a 5-foot setback from an alleyway. Section 13-1-105, however, indicates that lots abutting two opposite streets shall provide the street yard setback required by the district in which the lot is located from each street, which is 25 feet in all residential districts, except RS-2 requires a 30 feet rear yard setback.

If recommended, a public hearing would be scheduled before the Common Council for final action.

Action:

A motion was made by Commissioner Kaiman, seconded by Vice Chairperson Burgoyne, to require a 25-foot rear yard setback for accessory structures. The motion carried without a negative vote, with Commissioner Brown excused.

MAYOR'S ANNOUNCEMENTS

Mayor Myers announced that he plans to schedule a JETZCO meeting at the August 7, 2006 Plan Commission meeting. Council Member Beck understood that the Town Design Standards were the Town's, but wanted to make sure the Town JETZCO Members received a copy so they could actually look at it, so they can have it in their house. City Attorney Vance advised that the Common Council would address the JETZCO attendance issue.

ADJOURNMENT

Commissioner Emmerich moved to adjourn the meeting at 9:20 p.m. The motion was seconded by Vice Chairperson Burgoyne and carried without a negative vote, with Commissioner Brown excused.

Darla Drumel,
Administrative Secretary