

## **PLAN COMMISSION**

**PLN20060918-1**  
UNAPPROVED MINUTES

**September 18, 2006**

A regular meeting of the Plan Commission of the City of Cedarburg was held on Monday, September 18, 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, Park & Forestry Chairperson James Schara

Excused - Joe Emmerich

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

### **STATEMENT OF PUBLIC NOTICE**

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

### **APPROVAL OF MINUTES**

A motion was made by Commissioner Brown, seconded by Vice Chairperson Burgoyne, to approve the minutes of August 7, 2006. The motion carried without a negative vote, with Commissioner Emmerich excused.

### **COMMENTS AND SUGGESTIONS FROM CITIZENS**

No comments or suggestions were offered at this time.

### **REQUEST CONDITIONAL USE APPROVAL TO OPERATE A BED AND BREAKFAST AT W62 N556 WASHINGTON AVENUE - COLUM MAC CARTHY**

Mayor Myers declared the public hearing open at 7:03 p.m. Administrative Secretary Drumel confirmed that proper legal notice had been given.

Planner Censky noted that Mr. Mac Carthy had provided a letter apologizing for his absence from the meeting. Planner Censky noted that Mr. Mac Carthy had discussed his conceptual plans to convert the existing office building located at W62 N556 Washington Avenue into a Bed and Breakfast at the June meeting. Commissioners offered positive feedback and encouragement to pursue this project, as it is in an area where Commissioners have directed others with similar requests. According to the Code, Bed and Breakfast facilities are listed as permitted Conditional Uses in the B-3 District provided they are supported by sufficient off-street parking.

Planner Censky explained that the 1880 Victorian building is located in downtown Cedarburg, immediately north of the Mac Carthy's Irish Pub. Although it was converted to commercial use years ago, this residential building retains important characteristics of its original domestic use. Since this

structure is located in the Downtown Historic District, any change to the exterior will require both Landmarks and Plan Commission approval.

Planner Censky continued that the B-3 Zoning District does require that there be adequate off-street parking to support Bed and Breakfast facilities. The Zoning Code also permits the use of shared off-site parking when it is available. However, the applicant is required to submit the necessary documentation (i.e. easements) to show that such shared parking can be accomplished. Planner Censky pointed out that Mr. Mac Carthy owned the adjacent Irish Pub business but leases the building in which the business is located. The driveway between the Irish Pub and the Historic Victorian house is situated on the site of the pub but it is within a shared driveway easement that provides ingress and egress rights to both properties. Mr. Mac Carthy proposed to use the shared driveway and the back parking lot to support the access and off-street parking needs of the proposed Bed and Breakfast facility. Accordingly, while there is an existing shared driveway easement, the applicant will need to submit the necessary shared parking easement.

Planner Censky advised that Mr. Mac Carthy has only provided a hand drawn site sketch to give you a general understanding of his proposal and understands that he will need to submit a fully detailed site plan drawn in accordance with Sec. 13-1-124 of the Zoning Code for Plan Commission approval. Mr. Mac Carthy advised him that until he secures conditional use approval, he cannot acquire the needed financing to generate the plans and follow through with this project.

Planner Censky concluded that the proposed use would be consistent with the recommendations of the City's Blue Ribbon Visioning Committee's Report for downtown Cedarburg.

In response to questions from Council Member Beck, Planner Censky confirmed that Mr. Mac Carthy owned the business but leases the building, and is prepared to build the parking lot even though he is not the property owner. It appears that with the removal of storage and brush, the newly-paved parking lot would easily meet the Bed & Breakfast parking requirements. To assure that the Bed & Breakfast was supported by adequate off-site parking, the recorded easement would be structured so that even if the building and site were sold, the rights for shared access and shared parking would go with the sale. Planner Censky also confirmed that Mr. Mac Carthy would be purchasing the property proposed for the Bed & Breakfast establishment.

No comments were offered by the public.

**Action to Close Public Hearing:**

Council Member Beck moved to close the public hearing at 7:10 p.m. The motion was seconded by Vice Chairperson Burgoyne and carried without a negative vote, with Commissioner Emmerich excused.

**Continued Discussion:**

Commissioner Brown recused himself from the discussion and vote due to a possible conflict of interest.

In response to questions from Commissioner Kaiman, Planner Censky advised that 6 parking spaces were required for the 6-room Bed & Breakfast and that the Code does not require off-site parking for the existing Irish Pub. Commissioner Kaiman then asked if alcohol would be served at the Bed & Breakfast and City Attorney Vance responded that beverage licenses are under the jurisdiction of the Common Council. However, a guest could purchase their own.

**Action:**

A motion was made by Vice Chairperson Burgoyne, seconded by Council Member Beck, to approve the conditional use request contingent upon the following:

- Submittal and Plan Commission approval of a detailed site plan.
- Submittal and Plan Commission approval of a shared parking easement signed by the property owner.
- Six parking stalls are to be specifically dedicated to the Bed and Breakfast use.

**Continued Discussion:**

Although he would be voting in favor of granting the conditional use, Commissioner Kaiman expressed concern that there was a potential for some sort of use not envisioned by the Plan Commission. Mayor Myers noted that the conditional use would only allow a Bed & Breakfast and the conditional use would be revoked if used for anything else.

**Continued Action:**

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

**DISCUSS HOW TO PARTICIPATE WITH THE JOINT EXTRATERRITORIAL ZONING COMMITTEE (JETZCO) AND REPORT FROM JETZCO MEMBERS**

A memo provided in the meeting packet stated that Statute, 62.23(7)(a) states "The entire plan commission shall participate with the joint committee in the preparation of the plan and regulations, or amendments thereto."... She instructed the Plan Commission to discuss how it will implement this requirement. Attending JETZCO meetings is one option and as JETZCO will always be posted as a public meeting, the Plan Commission can attend. JETZCO can, of course, meet separately. In addition to attending the JETZCO meetings, the Plan Commission could be regularly updated by staff and JETZCO members, Town and/ or City appointed. Other options for this participation can also be discussed. Please be advised that any votes on the 5-Corners land use by JETZCO "shall be deemed action taken by the entire plan commission."

JETZCO Chairperson Burgoyne reported that the meeting was positive and constructive, with October 2, 2006 set as the next meeting date. His impression was that the Town Members were ready to go forward. The City made their presentation and the Town will present their plan at the October 2 meeting. The meeting locations will alternate between the City Hall and Town Hall on the first Monday of each month at 5:30 p.m. Overall, JETZCO was off to a good start and there was enthusiasm to go forward.

Mayor Myers felt it was important to receive a report of the JETZCO meeting at every Plan Commission meeting as a way to fulfill the Statute requirement that the Plan Commission participate in creating the plan. As long as the Plan Commission felt their opinions are known as to how the area should be planned, the JETZCO meeting could continue to be scheduled as planned. If, however, this procedure does not work, the situation may have to be addressed.

JETZCO Chairperson Burgoyne felt that the 5:30 p.m. time slot was ideal because the three JETZCO Members would be able to update the Plan Commission as well as receive input immediately.

Mayor Myers added that the JETZCO Members would also know the agenda and could discuss the agenda items at Plan Commission prior to the JETZCO meeting.

City Attorney Vance advised that a vote of the JETZCO is a vote of the City Plan Commission on what the area should look like if annexed to the City. The Common Council ultimately votes on the Plan. She noted that the basis of the Mandamus action was because the Town was saying they would not meet until the Plan Commission developed what it is JETZCO is supposed to develop. The lawsuit still existed, but was taken to bring the Town members to the table.

Council Member Beck believed the Council also was looking to have the Town cooperate and make progress. City Attorney Vance said that the presumption is that the Committee is formed to do what it is supposed do.

Commissioner Kaiman noted that credit was due to all parties for attending the JETZCO meeting.

Mayor Myers thought that as long as the Members come to the table, they are meeting their statutory requirement. Sometimes they did work, such as in Grafton and Mequon. Since the Town Members have come to the table, the lawsuit should not be left open any longer than absolutely necessary.

Commissioner Brown wondered if the Plan Commission wanted to identify goals that JETZCO should be striving for. He encouraged using the attitude that a plan can be created that works.

City Attorney Vance advised that if a plan is not adopted after two years, the JETZCO is disbanded and the area is back under the jurisdiction of the Town. JETZCO can, however, vote to extend their authority of another year. She added that after a certain waiting period, another JETZCO can be created by the City. The two-year period began when the Common Council adopted the resolution.

Mayor Myers explained that was why it was important to begin discussions as soon as possible because the time limit was already set. If JETZCO is unsuccessful, the City would still retain its extraterritorial jurisdictional approval of land divisions and plats.

Council Member Beck suggested that if the development continued and the wells failed, the City could be forced to provide municipal services and would be annexing the area into the municipality. The goal would be to have development that the City would be comfortable annexing.

City Attorney Vance noted that the EPA order was unique and due to safety reasons, required the City to provide water services to Town properties without requiring their annexation to the City. She added that those properties were existing before it was determined there was contamination and the City has within its authority not to extend sewer and water until there is annexation, absent of an EPA order. The EPA should not be ordering the City to extend services when the Town knowingly builds where contamination exists.

Mayor Myers questioned that if development occurs that is served by wells and they become contaminated; the City would be required to provide water service again. There is no reason to believe that the properties would be required to annex when it was known there was a potential for contamination.

Commissioner Kaiman summarized that the overriding goal was to protect the taxpayers. Commissioner Brown added that another goal was to open conversation between the Town and City to this and other issues.

Vice Chairperson Burgoyne noted that developers want to move forward with their projects, and it would be unlikely that they would like to be stymied for 2 years, which is motivation for the Town to participate to their advantage. He was optimistic after the first meeting and suggested that the subject should be closed until more discussions occur with the Town JETZCO Members.

**REQUEST FOR APPROVAL OF MINOR ARCHITECTURAL CHANGES FOR BUILDING NO. 2 ON ALYCE STREET - BILL CONLEY**

Planner Censky reported that Mr. Conley was seeking approval of minor changes to his architectural plans for one of his approved Alyce Street four-family condominium structures. City records indicated that he received final approval of his original plans for the two 4 – family structures on May 3, 2004 and a building permit was issued for construction of the first building later in 2004. Mr. Conley was preparing to commence with the second building but had included some minor design changes which need Plan Commission review before a permit could be issued. The most significant change was to the center single gables where the original plans show a double gable design. The single gable is consistent with the design of the first building and Mr. Conley believes it would unify the project better. The building footprint and size remained the same with the changes being limited to appearance and that Mr. Conley would continue to be bound by the original conditions of approval as indicated in the May 3, 2004 minutes.

**Action:**

A motion was made by Commissioner Brown, seconded by Council Member Beck, to approve the proposed minor architectural changes on the second building of the Alyce Street four-family condominium project as long as the developer continues to be bound by the original conditions of approval in the May 3, 2004 minutes.

**Continued Discussion:**

City Planner Censky advised that the modifications would make the second building more similar to the first building than as originally approved. Mr. Conley added that he liked the way the first building looked so the buildings would be similar in essence with subtle differences.

**Continued Action:**

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

**THE PLAN COMMISSION REVIEW OF RESOLUTION TO COMMENCE THE TAX INCREMENTAL DISTRICT (TID) CREATION PROCESS AND CONSIDER LAND USE PLAN AMENDMENT RECOMMENDATION FOR THE TID AREA**

Planner Censky pointed out that a letter was received late that day from the attorney representing the Baehmann property owners requesting delay on action on the Land Use Plan amendment to the October meeting. A meeting had been scheduled for Thursday, September 28, 2006 with Planning Consultant Marty Marchek, the Baehmann attorney, Ruth Baehmann, Bud Baehmann and Planner Censky. A delay would still meet the schedule for the TID #2 process.

Planner Censky explained that the purpose of the agenda item was to initiate the process for the creation of Tax Incremental Financing District No. 2 and to review and possibly recommend the Land Use Plan/Project Plan. At their September 11, 2006 meeting, the Common Council adopted Resolution No. 2006-19 authorizing the Plan Commission and staff to proceed with this project and they also adopted a timetable to guide the City through the process. A referral of the proposed Land Use Plan changes to the Common Council is needed to schedule a public informational meeting.

Planner Censky noted that, at the June 5, 2006 Plan Commission meeting, staff was asked to meet with the owners of the recently annexed land along Highway 60 to review alternative land use scenarios and then return with a plan for consideration to proceed with the creation of Tax Incremental Financing District (TID) No. 2. According to State law, property within a TID must be suitable for industrial sites or mixed-use development or at least 50% of the area must be blighted and in need of rehabilitation. The proposed project plan is designed to meet the criteria of a Mixed-Use TID.

Planner Censky recalled that the land use amendment was generated to address the concerns of Mrs. Dittmann (Rettmann Trust property) about having their entire 60-acre site at the northwest corner of Highway 60 and County Trunk I classified as Business Park and the question of whether it was wise to have a separate business park competing with the City's Park in such close proximity. A change to the classification of the Rettmann Trust parcel has an impact on which of the two TIDs the City can pursue. Initially, the City was pursuing an Industrial TID. However, the law requires that at least 51% of the area within an Industrial TID be zoned industrial. With the proposed changes to the Rettmann Trust parcel, the area within the TID is less than 51% and the City is limited to a Mixed-Use TID.

Planner Censky explained that for a Mixed-Use TID, development must contain a combination of industrial, commercial, or residential uses and lands proposed for newly platted residential uses, as shown in the project plan, may not exceed 35% of the area. Additionally, all residential areas must maintain a density of at least 3 units per acre, or the residential housing must be part of a conservation subdivision, or the residential housing must be within a traditional neighborhood development.

Planner Censky noted that the attached mixed-use project plan (amendment to the City's Land Use Plan) was prepared by Planning Consultant Marty Marchek in accordance with statutory requirements and was presented to the affected land owners earlier this summer. The most significant change to the overall plan is to the Rettmann Trust parcel where the one-third of the site is now classified as Office/Service and the northern two-thirds is Single-Family Residential Use at least 3 units/acre or a Conservation Subdivision. This classification would buy the City time to determine what kind of residential development it would allow. The other changes to the Land Use Map are viewed as fine tuning the existing map as it pertains to the Wirth/Stroebe site at the southeast corner of Highway 60 and Sheboygan Road and the Baehmann site along Cedarburg Road.

Planner Censky continued that the proposed plan for the Wirth/Stroebe site indicated a 5-acre independent living senior housing (RM-2(PUD)) at the east end of the site where the previous plan indicated Office/Service for the entire site. The changes to the Baehmann site are simple refinements to the land use category distribution as necessary to compensate for the proposed street pattern. About 14 acres at the northeast corner of the Baehmann site was reallocated to Business Park District and approximately 15 acres along the north property line are shown as Office/Service district. The golf driving range area shows Single-Family Residential District and directly north of that there is approximately 5 acres of Two-Family Residential.

Commissioner Brown asked if, once the Project Plan was accepted, the uses could be shifted within the TID. Planner Censky responded that the Mixed-Use TID does not require that the City rezone the entire site, which would cast it in stone. If there are any changes, however, the changes must maintain the percentages required for a Mixed-Use TID.

City Attorney Vance advised that there are a number of public hearings during the TID process and one would assume since public input is solicited, there is an opportunity to make changes based on the public input.

In response to a question from Commissioner Kaiman, Planner Censky noted that a density is not established for conservation subdivisions; it is a decision the community would make. Commissioner Kaiman then asked if more than one conservation subdivision could be established in the proposed 40-acre Rettmann single-family portion. Planner Censky responded that the site was somewhat small to establish more than one conservation subdivision, but if developed strictly under the standard single-family criteria, the density would be established at 3 units per acre. Commissioner Kaiman suggested that the density could be higher because the language states that it would be "at least" 3 units per acre.

City Attorney Vance read from a portion of the Zoning Code that a conservation subdivision shall be as required in the underlying zoning district.

Planner Censky explained that the same standards could be applied as done with the TopView Trails Subdivision and the Prairie View Subdivision where the underlying zoning and the Planned Unit Development (PUD) overlay were established at the same time, which was based on a plan that was presented.

City Attorney Vance continued that a minimum of 50% of the subject parcel shall be common space in a conservation district. Planner Censky clarified that is required if the City establishes an RS-8 Zoning District.

Commissioner Kaiman explained his concern was that it would be inappropriate to place an urban-type subdivision way out in an area surrounding by Town properties. He understood that the reason to do so was to make the TID work out financially, but was dead set against doing so from a planning standpoint. Commissioner Kaiman could not see how a less dense development could be required once the land use classification for 3-units per acre was in place.

Commissioner Brown concurred with Commissioner Kaiman, adding that it appeared to him that the proposed land use plan situated, for example, senior housing where there is no supporting development, such as walks or bicycle trails, etc. He felt the land use was just being fitted in and preferred that land use planning be deferred until the City knew what it wanted there.

Council Member Beck countered that the City needs to respect what type of development the property owner preferred. Mayor Myers added that the Council created a resolution to create the TID district that contemplated development in the manner proposed in conjunction with the financial models to make the TID successful. This plan had been presented to the Plan Commission many times, the Common Council did not receive strong objections, the planners went forward to create the plan and the financial modeling and the Common Council took action based on that information. However, the Plan Commission was free to make any recommendation to the Common Council it deemed appropriate.

Commissioner Kaiman stated that residential develops naturally, pointing out TopView Trails and Prairie View Subdivisions, and to put residential development where it is not appropriate strictly for the purpose of making a TID work financially, is precisely what the Plan Commission should oppose.

City Attorney Vance noted that she had not been involved in the TID process, but the Plan Commission is required to have a public hearing and must adopt a resolution regarding the TID

boundaries and the project plan and recommend approval to the municipal body, which has not yet been done.

Planner Censky advised that the public information meeting could be scheduled for October 2, 2006 after which a recommendation could be forwarded to the Common Council for their meeting on October 9. Since the public informational meeting is a Class 1 notice, the notice could be sent on September 19, 2006.

City Attorney Vance continued that the Council resolution stated that the Common Council was behind the creation of a TID and to start the process. One of the steps involves a hearing and involves the Plan Commission designating the boundaries, adopting and recommending approval, and making a finding that the most orderly development in the municipality. The meeting where the resolution is adopted can immediately follow the public hearing. After the project plan and TID boundaries are adopted by resolution, the Plan Commission forwards those to the Common Council for consideration.

Commissioner Brown reiterated that he found the plan to be a crazy hodge-podge, and should develop naturally. If no interest exists for duplex or commercial development, the City could end up with open spaces for 20-odd years.

With respect to the Baehmann property, Planner Censky pointed out that the changes of use from north to south reflects a transition in uses from existing single-family located directly to the south to higher density duplexes that serves as a transition to a community service area that fronts on Cedarburg Road and is immediately adjacent to business development in the Town of Cedarburg. On the east side of the TID, single-family transitions to senior duplex housing to the Community Business use classification, where there may be supporting types of uses for the senior housing. These are orderly and appropriate transitions.

Mayor Myers interjected that the senior housing was approved for that area in 2003 because there are very few locations left in the City that can be developed as senior housing.

Commissioner Brown stated that though it probably makes sense, he would prefer to see the natural development of those areas rather than having it dictated by the City many years before development occurs.

Council Member Beck pointed out that if the City chooses to allow natural development without City Land Use Planning, there would not be a TID. Planner Censky added that, for the most part, the land uses match the City's Master Land Use Plan.

In response to a question from Vice Chairperson Burgoyne, Planner Censky responded that the plan can be changed if so desired as long as the percentage for residential is not exceeded.

Commissioner Kaiman stated that anytime is a good time to correct something that does not look right. Rettmann was presented as all business park and has changed, so the changes have been made after the Plan Commission recommendation. To put in residential simply to make the TID work financially when all knows that there would be no problem with the area developing the way it wants to develop in the natural fashion. He still supported a 60-acre business park as originally proposed.

Vice Chairperson Burgoyne suggested that Planning Consultant Marchek present the project plan prior to the informational meeting.

Mayor Myers explained that his roles as Mayor and Chair of the Plan Commission require him to be careful about what authority the Plan Commission has in overriding directives of the Common Council. He pointed out that the resolution refers to the Land Use Plan adopted in 2003 by the Plan Commission and the Common Council, and based on that believed the Council intended the land uses to be as presented.

Mayor Myers requested that Planning Consultant Marchek make his presentation on October 2 and, if needed, schedule the public informational meeting for the November 6, 2006 meeting. The recommendation would then be presented to the Common Council on November 13, 2006.

Bud Baehmann, representing the owner of property at W74 N1204 Washington Avenue and W73 N1122 Washington Avenue, explained that they became interested in participation in the TID when there was a great deal more residential use, which would create higher values for the land. He did not believe it was not appropriate to take value away from their property in trade to accommodate other needs for the TID.

Commissioner Brown stated that he had no recollection of recommending any particular plan to the Common Council, but believed that it would be returned to the Plan Commission for further consideration. Mayor Myers recalled that the Plan Commission approved in concept and the Council moved forward based on that recommendation.

Staff was requested to provide copies of minutes to determine what action was actually taken.

### **MAYOR'S ANNOUNCEMENTS**

#### **Next Meeting Date**

Mayor Myers reminded Commissioners that the next meeting would be held in two weeks—on the regular meeting date.

#### **Birthday**

Mayor Myers thanked Commissioner Brown for attending the meeting on his birthday.

### **ADJOURNMENT**

Commissioner Brown moved to adjourn the meeting at 8:18 p.m. The motion was seconded by Commissioner Kaiman and carried without a negative vote

Darla Drumel,  
Administrative Secretary