

**CITY OF CEDARBURG
PLAN COMMISSION**

**PLN20061106-1
UNAPPROVED MINUTES**

November 6, 2006

A regular meeting of the Plan Commission of the City of Cedarburg was held on Monday, November 6, 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, Keith Kaiman, Joe Emmerich

Excused - Brook Brown, Park & Forestry Chairperson James Schara

Also Present - Mayor Gregory Myers; Council Member Haly Besaw; City Planner Jon Censky; Administrative Secretary Darla Drumel; interested citizens

STATEMENT OF PUBLIC NOTICE

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

APPROVAL OF MINUTES

A motion was made by Council Member Beck seconded by Commissioner Burgoyne, to approve the minutes of October 2, 2006. The motion carried without a negative vote.

COMMENTS AND SUGGESTIONS FROM CITIZENS

No comments or suggestions were offered at this time.

PUBLIC HEARING ON CONDITIONAL USE, SITE, ARCHITECTURAL AND LANDSCAPE PLAN APPROVAL REQUEST TO CONSTRUCT AND OPERATE A 15-BED COMMUNITY-BASED RESIDENTIAL FACILITY ON A VACANT SITE DIRECTLY NORTH OF W51 N848 KEUP ROAD – JIM USELDING/FAMILY TREE RESIDENTIAL SERVICES

Mayor Myers declared the public hearing open at 7:05 p.m. Administrative Secretary Drumel confirmed that proper legal notice had been issued.

Planner Censky advised that Mr. Uselding was requesting conditional use approval to construct and operate a Community-Based Residential Facility (CBRF) on the recently-created vacant parcel located directly north of W51 N848 Keup Road. He was before the Plan Commission last May seeking consultation and while some Plan Commissioners expressed concern about the intensity and compatibility of this use as compared to surrounding uses, the majority had a positive reaction and encouraged the applicant to pursue the project. Mr. Uselding produced detailed site, architectural and landscape plans and was pursuing approval. The project is designed after to his existing CBRF located at W72 N675 Harrison Avenue, which was approved in 1993. He added that Mr. Uselding had conducted an open house of the existing CBRF this past summer with invitations sent to property owners in the area of the Keup Road site.

Planner Censky reminded Commissioners that CBRFs are protected and licensed by the State. Those that care for 8 or fewer persons are permissible in any single-family or two-family district and the only input local communities have is to identify any hazards in the area that may affect the occupants of the facility. CBRFs that provide care for more than 8 persons are permitted by conditional use permit. The proposed new facility would provide care for 15 residents and a conditional use permit is required. Community living arrangements of this nature are restricted from locating within 2,500 feet of an existing facility and the total capacity of all such facilities in the City cannot exceed one percent of the City's population.

Planner Censky reported that Cedarburg has two existing CBRFs; the Harrison House with 15 beds and the Extencicare Facility of Lincoln Boulevard with 78 beds, for a total of 93 beds. With Cedarburg's current population at 11,386, the maximum number of beds allowed is 113 or 20 additional beds. Since the existing CBRFs are located more than 2,500 feet from the proposed site, this request complies accordingly.

Planner Censky reported that review of the site plan indicated compliance with the minimum dimensional requirements in terms of setbacks, offsets, FAR, and lot coverage. Mr. Uselding proposes a 7, 328 square-foot building to be supported by a 7-stall parking lot. The parking lot would have two access points to Keup Road, which requires specific Plan Commission approval as Section 6-3-1(b)(7) of the Code of Ordinances restricts sites to no more than one driveway except where deemed necessary and feasible by the Plan Commission. As part of this project, Mr. Uselding would be required to extend a 5' wide public sidewalk along the frontage of Keup Road and would be responsible for extending it along the frontage of the future street when that is constructed. The plan showed a permeable hard surface to support emergency vehicles along the south side of the building, which would not be necessary if an adjacent subdivision that proposes the extension of Covington Square along the north side of this property is approved. Since there then would be a public road to the north of this site, Planner Censky suggested that the plans should be revised to provide the ability to relocate the north access drive to that future road.

Planner Censky continued that the facility was designed after the Harrison House CBRF located at W72 N675 Harrison Avenue. Use of materials, however, has changed with face brick veneer proposed for the front elevation and horizontal composite siding 6" exposure on all others sides. The Harrison House has fieldstone veneer on the front elevation and composite siding on all other elevations. The roof material will be of Architectural shingles. He noted that the petitioner brought sample materials to the meeting.

Planner Censky added that the landscape plan proposed a foundational planting scheme with low-growth bushes and perennial flowers. At the corners of the building, the plan shows a higher growth Chanticleer pear tree. Directly behind the building, the plan shows a planting bed centered with a River Birch, accented by lower growth plant material replicating the foundational scheme. At the northeast corner of the site the plan includes a grouping of three Black Hill Spruce trees. In order to provide some screening of the parking area out front, the applicant proposes a low-growth hedge of Buffalo Junipers.

In summary, Planner Censky indicated that the plans complied with the dimensional requirements of the Code and suggested that the following conditions should be considered if approved:

- Engineering Department approval of the grading, drainage, stormwater management and erosion control plans.
- Plan Commission approval of the double access onto Keup Road as required under Section 6-3-1(b)(7) of the Code of Ordinances.
- The applicant constructing a 5-foot wide public sidewalk along the Keup Road frontage and being responsible for a like sidewalk along the frontage of the future street to the north.
- Sanitary sewer and water service connections to be made off the future street to the north.
- Payment of all impact fees prior to issuance of a building permit.
- The applicant provides the ability to relocate the north access drive to Covington Square extended. If the Covington Square extension is pending (i.e. preliminary plat approved) at the time final site work is underway, the emergency drive may not be necessary. At such time staff will consult with the Fire Department to make the decision.
- The service connections to sewer and water occur under the direction of the City Engineer.

James Uselding, of Family Tree Residential Services, explained that he was surprised to hear of the consideration of the extension of Covington Court. Mayor Myers explained that the preliminary plat had just been submitted to City staff for review, had not yet been reviewed by the Plan Commission or the Common Council and that no timeframe for construction was available. Mr. Uselding explained that their preference was to have the building face Covington Court extended, but was uncertain on whether the plans should be related to the new street in the event it was not constructed in time for the CBRF construction.

Commissioner Kaiman questioned whether the Plan Commission would like the side of the building with the cement composite siding facing Keup Road. Mark Hertzfeldt of Design 2 Construct, the architect for the CBRF, noted that the maximum height of the new building would be about 24 feet. Planner Censky pointed out that the maximum allowed by Code is 35 feet.

In response to a question from Vice Chairperson Burgoyne, Mr. Uselding noted that the Plan Commission had requested a narrower driveway at the Harrison Avenue facility, but the City later allowed him to expand the width of the driveway by 18 inches because drivers were constantly driving onto the lawn.

Council Member Beck asked if Council Member Kinzel communicated with City staff regarding the CBRF proposal. Planner Censky responded that he received an e-mail from Council Member Kinzel acknowledging that he was aware the City received the proposal. Administrative Secretary Drumel noted that an original copy of the proposal was sent to Council Member Kinzel.

Chuck Otto of W51 N842 Derby Lane advised that his back yard is right across the street from the lot proposed for the CBRF and complained that no information had been provided to him on the proposal. He had received a letter only a week or so earlier but did not have enough information to comment on the project or the rezoning at the meeting.

Administrative Secretary Drumel advised that the notice was sent to invite people to call, e-mail or visit City Hall for additional information if desired.

Mr. Uselding added that in June 2006 he had notified all the property owners within 300 feet of the site with an invitation to attend an open house at the Harrison Avenue facility so that they could see what their operation was.

The property owners in attendance denied receiving an invitation and that the first they had heard about the project was the notice received in the mail for the public hearing. Vice Chairperson Burgoyne advised that he lives in the Georgetown Subdivision and did receive an invitation. He added that the invitation was a voluntary extra effort on the part of the petitioner.

Stephen Froehlich of W51 N894 Keup Road believed that the proposal was for a large building of high-density housing that has been historically rejected as out of character for the residential area. If the CBRF was to be approved, it would open the door to additional high-density housing development. He opposed the proposal because he felt it was not in the best interest of the neighborhood, the traffic patterns of the neighborhood and the aesthetics of the neighborhood.

Barb Niemczyk of W51 N846 Derby Court definitely agreed with Mr. Froehlich and opposed the proposal for the same reasons.

Charlie Ketelhohn of N86 W5175 Covington Square advised that his biggest concern was for traffic flow in regards to little kids in the area. The proposal seems very different from what surrounds the site. He was not invited to an open house in June and he is the closest property to the proposed CBRF.

Action to Close Public Hearing

Council Member Beck moved to close the public hearing at 7:23 p.m. Vice Chairperson Burgoyne seconded the motion and it carried without a negative vote, with Commissioners Brown and Schara excused.

Continued Discussion

Planner Censky responded to some of the public comments that in May, Mr. Uselding appeared before the Plan Commission simply to receive guidance on the use of 15 beds for the frail elderly, which does not require a rezoning. Public comment is solicited before any decision is made on the conditional use request. The Harrison CBRF is in a residential neighborhood with the same zoning as the Keup Road site. The intent of the State Statutes is to de-institutionalize assisted living facilities by allowing people to live in a residential setting.

Commissioner Kaiman explained that he was familiar with the Harrison Avenue CBRF and was aware that there was a great deal of controversy when it was first proposed. To his knowledge, however, there have never been any complaints about the facility. He believed, however, that there was a disconnect in the process since the residents were unaware of the proposal and was sympathetic to their concern. He asked what notices were provided and if the Council Member of the district made an effort to make his constituents aware. Commissioner Kaiman requested more information before he would vote on the issue.

Planner Censky explained that a "Class II" notice was published in the News Graphic twice and notices were also sent out 10 days prior to the public hearing to every property owner within 300 feet of the site.

Council Member Beck advised that if a project is proposed in her district, she receives several telephone calls. Then she attends the City meetings to advise the officials of the constituent comments. Council Member Beck recalled that she voted against the proposal at the May meeting, not necessarily because she was against a CBRF project, but because she did not feel the neighborhood had a chance to review the proposal. Council Member Beck suggested that action on the proposal be delayed another month to obtain the proper input and to try to avoid any hard feelings.

Mayor Myers understood the concern of the neighbors but cautioned that the Plan Commission is constrained by State law so that people remain as part of the community and are not institutionalized or warehoused away from the residential areas. The individuals who would stay at the CBRF should have the opportunity to live in a neighborhood, be surrounded by families and have as normal of life as possible. State Statutes put special restriction on whether or not these types of facilities can be denied. The Plan Commission is charged with making sure the facility meets the needs of the community, is compatible with the neighborhood and is available for Cedarburg residents who should need that type of care.

Mayor Myers continued that the State's Statutes and City Ordinances were followed and documents were available at City Hall to review. The intent is always to be aboveboard and open to citizen involvement.

Vice Chairperson Burgoyne thought a presentation by the developer might clear up some questions about the proposal and suggested that a drive by the Harrison House would provide a better perspective of the project. When the Harrison House was proposed ten years ago, there was a lot of controversy but it has fit in well with the neighborhood. He would not be opposed to continuing the discussion at the next meeting.

Vice Chairperson Burgoyne echoed Mayor Myers' comments concerning the City's requirement to comply with the disability laws. He added that the City's Visioning Statement includes a recommendation to add diversity of housing such as this proposed assisted living facility.

Mr. Hertzfeldt reviewed the plans for the building, parking and landscaping. He advised that the design is intended to make people feel at home and not to stand out in the neighborhood. Mr. Uselding noted that none of the residents of the CBRF drive, so traffic flow has not been an issue at his facilities.

A member of the audience noted that her relative receives excellent care at Mr. Uselding's facility and the home appears as a regular house in the neighborhood. She praised the landscaping.

Mr. Otto stated that there is no question about the value of such a facility, but the first time he had heard about the proposal was ten days ago, which was sorely deficient. He added that the van designed to transport disabled individuals does not look residential and a parking lot full of cars does not blend into the neighborhood.

Mr. Froehlich felt that approving the CBRF at this time would be piecemealing and the whole project would be better if it were included as part of the proposed Keup Trails Subdivision.

Mr. Ketelhohn advised that providing access to an extension of Coventry Court would be good, but remained opposed to the project. He asked if another open house at the Harrison Avenue facility could be arranged.

Mr. Uselding explained that the residents had been transferred for the initial open house and it was not practical to go through that procedure again. However, he would be happy to provide private tours by appointment.

Council Member Beck asked if there was a possibility to move the parking to the back of the building. Mr. Hertzfeldt responded that it could be done if access is provided off from a road to the north. Council Member Beck asked if parking could be moved to the other side and Mr. Hertzfeldt noted that the building would have to be shifted to the west and resident's bedrooms would be next to Keup Road. Planner Censky noted that the parking would then be directly at a residential lot line.

Mr. Ketelhohn asked if the proposed Preliminary Plat for Keup Trails provided a direct connection to Falls Road. Mayor Myers responded that Falls Road would not be a through street in the subdivision.

Mayor Myers asked Mr. Uselding to work with City staff to see how the building would work with the proposed new subdivision and whether it would be appropriate to rotate the building to face an extension of Coventry Court for the December 4, 2006 meeting. Council Member Beck asked that both proposals be presented at the next meeting. He urged interested parties to take advantage of Mr. Uselding's offer to conduct private tours of his existing facility on Harrison Avenue before the next meeting. Council Member Beck encouraged the neighbors to contact their Council Member. Planner Censky pointed out that the December 4 meeting would not be a public hearing and notices would not be mailed to the property owners within 300 feet.

The Plan Commission considered whether or not the changes they requested in the plans would be significant enough to require a new public hearing. Council Member Beck asked if notices could be sent even if a public hearing is not required. Administrative Secretary Drumel explained that a fee of \$250 is paid for each public hearing to cover the costs of newspaper notices and the mailings to the property owners within 300 feet of the subject site.

Mayor Myers and Council Member Beck confirmed that the audience understood that the discussion on the conditional use request would be continued at the December 4, 2006 Plan Commission meeting. The meeting would start at 7:00 p.m. and copies of the agenda could be accessed on cable, at the City's web site (www.ci.cedarburg.wi.us) and through City staff. They were encouraged to come to City Hall to review the plans and have their questions answered.

Mayor Myers announced that the proposed Preliminary Plat for the subdivision would also be an item for discussion at the December 4, 2006 meeting.

REQUEST FOR CONDITIONAL USE APPROVAL TO REPLACE EXISTING NINE ANTENNAS WITH NEW ANTENNAS AND ADDING THREE NEW ANTENNAS TO THE HANDRAIL OF THE WATER TOWER LOCATED AT N49 W6411 WESTERN ROAD – NEXTEL/SPRINT SPECTRUM

Mayor Myers declared the public hearing open at 7:55 p.m. Administrative Secretary Drumel confirmed that proper legal notice had been issued.

Planner Censky advised that the applicant was requesting conditional use amendment to add three new antennas to the handrail of the City's water tower and to replace their existing nine antennas with newer "like" models. The new antennas would replace the existing at the same height of 127.0' on the 165' high tower, and their equipment would be located in the existing telecommunication shelter at the base of the tower. Our records indicate that the original nine antennas and an equipment shelter were approved by Plan Commission action on June 4, 1998. The antennas will be licensed by the Federal Communications Commission (FCC). Nextel/Sprint Spectrum has operated in compliance with the original approval since installation. Planner Censky suggested that approval should be subject to the terms and conditions of a lease agreement for the subject facility.

Paige Naves of Nextel/Sprint Spectrum reported that a structural analysis had been done on the water tower and their lease with the City requires that any interference would have to be remedied.

Action to Close the Public Hearing

A motion was made by Commissioner Emmerich, seconded by Council Member Beck, to close the public hearing at 8:02 p.m. The motion to close the public hearing carried without a negative vote, with Commissioners Brown and Schara excused.

Action:

Council Member Beck moved to approve the request from Nextel/Sprint Spectrum to add three additional antennas and replace nine existing antennas on the water tower located at N49 W6411 Western Road subject to the terms and conditions of a lease agreement for the subject facility. The motion was seconded by Vice Chairperson Burgoyne and carried without a negative vote, with Commissioners Brown and Schara excused.

REVIEW OF DRAFT PROJECT PLAN FOR THE PROPOSED TAX INCREMENTAL DISTRICT (TID) NO. 2 AND POSSIBLE AUTHORIZATION OF A PUBLIC HEARING ON THE PLAN FOR THE DECEMBER 4, 2006 PLAN COMMISSION MEETING

Planning Consultant Marty Marchek noted that the draft project plan was not being presented for action at the meeting but to solicit input and resolve questions prior to the public hearing scheduled for Thursday, January 4, 2007. Action could then be taken after the public hearing.

Mr. Marchek reviewed the proposed land uses for the entire TID No. 2, explaining that the property owners agreed with the uses and that residential uses did not exceed the 35% maximum allowed. After the Project Plan is accepted by the Common Council, the Joint Review Board is created to make a finding that the TID is needed and sound. The Department of Revenue (DOR) then creates the TID and monitors that the taxes are fairly and accurately allocated. Property owners in a TID pay the same rate of taxes that owners outside the TID pay. Tax Incremental Financing (TIF) is a special allocation method for taxes collected on property value increases within the TID.

Mayor Myers asked if the presentation could continue later in the meeting to allow action to be taken before Vice Chairperson Burgoyne had to leave the meeting. The request was granted.

REVIEW PROPOSAL TO SPLIT A 23.31-ACRE PARCEL AT 8161 PLEASANT VALLEY ROAD INTO THREE SEPARATE PARCELS OF 10.3 ACRES, 8.2 ACRES AND 4.8 ACRES IN SIZE – JOAN KELLEHER

Planner Censky explained that Joan Kelleher was requesting land division approval for a parcel located in the Town of Cedarburg at 8161 Pleasant Valley Road. The parent parcel is 24.8 acres in size and will be split into three separate parcels of 10.3 acres, 8.2 acres and 4.8 acres. He noted that the parcel is located outside of the City's Sanitary Sewer Service Area and is not planned to be served by future public sanitary sewers. Therefore, the parcels will be served by private onsite soil absorption systems and wells. The Certified Survey Map (CSM) complies with the Town zoning regulations and received approval recommendation by the Town Plan Commission on October 18, 2006.

Action:

A motion was made by Vice Chairperson Burgoyne to approve the proposed three-lot CSM for 8161 Pleasant Valley Road. The motion was seconded by Commissioner Kaiman.

In response to a query from the Plan Commission, Ms. Kelleher advised that her mound system was installed in 1999.

The motion carried without a negative vote, with Commissioners Brown and Schara excused.

PROPOSAL TO REDEFINE THE LAYOUT OF THREE EXISTING LOTS LOCATED AT W61 N347 WASHINGTON AVENUE, W61 N353 WASHINGTON AVENUE AND THE VACANT LOT TO THE REAR INTO THREE CODE-COMPLIANT LOTS FRONTING WASHINGTON AVENUE – FRED WILLIAMSON

Planner Censky advised that Mr. Williamson was requesting approval to redefine three existing lots located at W61 N347, W61 N353 Washington Avenue and the vacant lot behind. The proposed lot layout will be Code-compliant, resulting in three lots facing Washington Avenue. While no new lots are being proposed, the result will be one additional buildable lot. The current layout includes an Outlot that is not buildable because it lacks access to a public street but will be rendered buildable as a result of this change. Outlots are defined as *a parcel of land, other than a lot or block, so designated on the plat, but not of standard lot size, which can be either redivided into lots or combined with one or more other adjacent outlots or lots in adjacent subdivisions or minor land divisions in the future for the purpose of creating buildable lots*. In this instance, the Outlot will be combined with the two front lots and the south front lot will be split into two. The result is a change from two buildable lots and an Outlot to three buildable lots.

Action:

Vice Chairperson Burgoyne moved to approve the proposed changes to three existing lots at W61 N347, W61 N353 Washington Avenue and the vacant lot behind to create an additional lot fronting Washington Avenue subject to the following conditions:

- Submittal and staff approval of an official Certified Survey Map (CSM).
- The applicant shall pay the required \$6,162.88 impact fee prior to recording the CSM.
- The vacant lot is an infill lot and the future home plans will be processed accordingly.

Mayor Myers seconded the motion to allow for discussion.

Continued Discussion

Council Member Besaw reported that area neighbors had been notified of the proposal. She was opposed because it would mean putting another house and another driveway onto Washington Avenue and the lots were narrow compared to adjacent properties.

Planner Censky noted that the CSM will have to confirm that the change will not make the existing home nonconforming. He added that because all lots would meet the City's Zoning requirements, denial would have to be based on something other than zoning.

Mayor Myers cautioned that the Plan Commission could not be arbitrary about applying the criteria specified in the zoning ordinances. It is the function of the Plan Commission to determine if the zoning ordinances are being complied with.

Council Member Beck asked if because it would be creating an infill lot, it could be denied based on the criteria for infill lots. Planner Censky replied that infill lot approval applies only to a structure.

Commissioner Kaiman believed that "infill" meant "lot," and Council Member Beck suggested that a legal opinion may be necessary. Commissioner Kaiman continued that to put three homes where there were two would significantly change the character of the area.

Noel Jepson of W61 N358 Washington Avenue noted that his property is directly across the street from the site and believed that since no rezoning is required; the property owner should be permitted to do what the zoning allows. He did, however, think it would make sense to talk to the neighbors to solicit their support before making the request to the Plan Commission.

Action to Call the Question:

A motion was made by Vice Chairperson Burgoyne, seconded by Mayor Myers, to call the question. The motion carried with Mayor Myers, Council Member Beck, Vice Chairperson Burgoyne, and Commissioner Emmerich voting in favor; Commissioner Kaiman opposed; and with Commissioners Brown and Schara excused.

Action on Original Motion:

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

Vice Chairperson Burgoyne was excused from the meeting at 8:30 p.m. and the TID No. 2 presentation continued without a quorum of the Plan Commission.

(continued) REVIEW OF DRAFT PROJECT PLAN FOR THE PROPOSED TAX INCREMENTAL DISTRICT (TID) NO. 2 AND POSSIBLE AUTHORIZATION OF A PUBLIC HEARING ON THE PLAN FOR THE DECEMBER 4, 2006 PLAN COMMISSION MEETING

Mr. Marchek reviewed the proposed three phases of the development, noting that the water tower in the Business Park would be the last of the infrastructure, but that a developer would have to be courted for the Business Park before it Phase 2 could be implemented. He added that it is estimated to be \$750,000 to \$1 million to upgrade Highway 60 at the Business Park as directed by the Department of Transportation (DOT).

PLAN COMMISSION
November 6, 2006

PLN20061106-10
UNAPPROVED MINUTES

Justin Longley of Ehlers & Associates advised that his firm provided conservative assumptions in its economic feasibility analysis. In addition, the City has substantial unused debt capacity, which means the City has the financial capacity to undertake the proposed construction projects outlined in the Project Plan.

REVIEW AND RECOMMENDATION PERTAINING TO REVISED FLOODPLAIN ORDINANCE

No discussion occurred on this item because of a lack of quorum.

REPORT FROM JETZCO MEMBERS

The Plan Commission discussed the JETZCO meeting.

MAYOR'S ANNOUNCEMENTS

Mayor Myers had no announcements.

ADJOURNMENT

No formal action was taken to adjourn the meeting because of a lack of a quorum. The meeting ended at 9:25 p.m.

Darla Drumel,
Administrative Secretary