

**CITY OF CEDARBURG  
PLAN COMMISSION**

**PLN20061204-1  
UNAPPROVED MINUTES**

**December 4, 2006**

A regular meeting of the Plan Commission of the City of Cedarburg was held on Monday, December 4, 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, Keith Kaiman, Joe Emmerich, Park & Forestry Chairperson James Schara

Also Present - Mayor Gregory Myers; Council Member Kip Kinzel; City Attorney Kaye Vance; Director of Engineering & Public Works Tom Wiza; 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 Emmerich, to approve the minutes of November 6, 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 APPROVAL REQUEST TO INSTALL NEW ANTENNAS TO THE WATER TOWER LOCATED AT N49 W6411 WESTERN ROAD AND TO CONSTRUCT AN EQUIPMENT BUILDING SIMILAR TO THE EXISTING BUILDINGS AT THE BASE OF THE TOWER – T-MOBILE**

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

Planner Censky advised that T-Mobile was requesting Conditional Use Approval to attach 6 cellular antennas to the legs of the City's water tower and to construct their own stand-alone equipment shelter similar to the existing buildings at the base of the tower. This would be the sixth cellular service provider on the tower, each having their own equipment shelter. He believed, however, that AT&T would be discontinuing use of the tower for their antennas and use of their equipment shelter at the base in late January 2007.

Planner Censky explained that the six new antennas will be attached to the water tower legs directly below the existing Nextel/Sprint ones with 2 new antennas per leg. These antennas will look similar to the existing Nextel antennas. With respect to their proposed equipment shelter, the plans show it being located between two existing shelters within the fenced area south of the tower. This

may interfere with future maintenance operations of the tower and, therefore, Cedarburg Light & Water recommends against that location. Instead, Light & Water advised that AT&T will be vacating their existing equipment shed located at the northeast corner of the fenced area and has encouraged them to pursue use of that building. As of late January 2007, AT&T will no longer be leasing space on the City's water tower, which will free up the existing shelter or the space where it is located.

Planner Censky offered some conditions of approval for consideration.

Commissioner Brown asked how many antennas could be placed on the water tower. Planner Censky noted that the antennas were very light in weight and were not very visible on the water tower.

No public comments were offered.

**Action to Close Public Hearing:**

Commissioner Brown moved to close the public hearing at 7:10 p.m. The motion was seconded by Commissioner Emmerich and carried without a negative vote.

**Action:**

A motion was made by Commissioner Emmerich, seconded by Council Member Beck, to approve the conditional use request subject to:

1. The Conditional Use Permit is subject to the terms and conditions of a lease agreement for the subject facility approved by the Common Council.
2. The facilities shall be in accordance with the approved site and architectural plans.
3. The applicant should be encouraged to pursue the AT&T building for their equipment needs.
4. Noise emanating from the equipment shelter shall comply with the performance standards as set forth in the City of Cedarburg Zoning Code and/or Nuisance Code.
5. Exterior lighting or signage not permitted unless specifically approved by the appropriate approving authority.
6. All cable wires are to be securely and tightly attached to the tower legs.

Commissioner Burgoyne offered the friendly amendment that the phrase "should be encouraged" in the third contingency be replaced with the word "shall" so that T-Mobile pursue the AT&T building for their equipment needs or otherwise return to the Plan Commission.

The motion, as amended, carried without a negative vote.

**PUBLIC HEARING TO REVIEW DRAFT PROJECT PLAN FOR THE PROPOSED TID NO. 2 AND POSSIBLE RECOMMENDATION TO THE COMMON COUNCIL**

Mayor Myers declared the public hearing open at 7:11 p.m. and Administrative Secretary Drumel confirmed that proper legal notice had been given.

Planning Consultant Marty Marchek advised that any action taken would be to recommend to the Common Council the boundaries of the TID No. 2 and to approval of the Project Plan. The Common Council would consider these issues after the January Plan Commission meeting. He explained that

Tax Incremental Financing (TIF) legislation was adopted by the State in 1975 to allow municipalities to borrow monies and collect *all* the property taxes from the Tax Incremental District (TID) until the debt to improve the properties was paid off. Mr. Marchek pointed out that the TID does not usually generate costs to the Counties, the School District or the Milwaukee Area Technical College (MATC). There is a 20-year life to the TIF where the municipality can collect the taxes, with a five-year time extension if warranted. The City was pursuing a TIF because without a TIF, it would not develop due to costs of infrastructure for business park development of the City's property south of Highway 60.

Mr. Marchek added that a change in 2004 in the TIF legislation created a "mixed-use" TID, with a cap of 35% for the residential component. The City's proposal is for a mixed-use TID and its Clerk would be required to annually certify that the residential component does not exceed 35%. He believed that the cost estimates for infrastructure, provided by Ruekert & Mielke, were sound. The Project Plan outlined three phases of development, so that development could be delayed until supported by financially feasible projects.

Justin Longley of Ehlers & Associates reported that conservative estimates were used to determine the financial feasibility of the TIF. He noted that 18 years was a realistic assumption for closeout of the District.

Commissioner Kaiman asked what the consequences would be if the entire TID did not develop and the residential component exceeded the 35% maximum. Mr. Marchek responded that the legislation was so new that there was no experience with that situation; however, all of the taxing entities would have to be paid back if the TIF would fail. City Attorney Vance opined that there would probably be a tax consequence.

Nancy Baehmann, who owns property at 1123 Washington Avenue, asked if City services would be extended to her property and if a charge would then be assessed. Director Wiza responded that the City cannot place assessments on Town properties, but if annexed, property owners would pay for frontage costs. It would be Ms. Baehmann's option on whether or not to annex to the City.

**Action to Close Public Hearing:**

Commissioner Brown moved to close the public hearing at 7:50 p.m. The motion was seconded by Vice Chairperson Burgoyne and carried without a negative vote.

**Action:**

A motion was made by Commissioner Brown, seconded by Commissioner Schara, to recommend approval of the proposed TID boundaries and draft Project Plan for the TID No. 2.

**Continued Discussion:**

Commissioner Kaiman wished to forward his opinion that the only good argument for the TIF is the development of the Kohlwey property as a business park, which is not a good argument for the rest of the TID. The Project Plan sardines residential development in inappropriate areas and is only included as it would pay for the TID. There is no reason to encourage residential development, which would occur without the TID.

Mayor Myers noted that each proposed development would be reviewed by the Plan Commission and the City would absolutely continue to have a say in what happens.

**Final Action:**

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

**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**

Planner Censky reported that the Commissioners held a public hearing on Mr. Uselding's proposed Community-Based Residential Facility (CBRF) in November, but withheld action pending submittal of plans reorienting the building to face north for comparison purposes. The one month delay was also intended to give neighbors more time to familiarize themselves with the project. Two layouts were presented; one showing the building facing west and the other showing the building facing north. Mr. Uselding preferred the plan with the building facing west as the other plan reveals that property constraints adversely restrict the layout of a north facing building because the site is 17 feet deeper than it is wide. With a west-facing building, the plans incorporate an attractive backyard landscape feature that can be more readily enjoyed by residents of this facility. From an urban design standpoint, the building should face Keup Road. To improve traffic circulation, the plans now show the access to both Keup Road and to the future road to the north as was suggested at the November meeting.

Planner Censky reminded Commissioners that CBRFs are licensed by the State and those that care for 8 or fewer persons are permissible in any single-family or two-family district without being subject to local ordinances. CBRFs that provide care for more than 8 persons are permitted by conditional use permit. Mr. Uselding proposes this facility to provide care for 15 residents which will mirror his existing facility on Harrison Avenue.

Planner Censky advised that the preferred site plan complies 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 is now proposed with one access drive to Keup Road and one to the future street to the north. The two drives require 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, the applicant will be required to extend a 5-foot wide public sidewalk along the frontage of Keup Road and will be responsible for extending it along the frontage of the future street when that is constructed.

Planner Censky continued that the proposed facility was designed after the Harrison House CBRF located at W72 N675 Harrison Avenue with face brick veneer proposed for the front elevation and horizontal composite siding 6-inch exposure on all other sides. The Harrison House has fieldstone veneer on the front elevation and composite siding on all other elevations. The roof material would be of Architectural shingles.

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 showed a higher-

growth Chanticleer pear tree. A planting bed centered with a River Birch, accented by lower growth plant material replicating the foundational scheme, was proposed for the area directly behind the building. At the northeast corner of the site, the plan included a grouping of three Black Hill Spruce trees. In order to provide some screening of the parking area out front, low-growth hedge of Buffalo Junipers would be planted.

Planner Censky suggested some contingencies for the conditional use approval.

In response to a question from Mayor Myers, Planner Censky pointed out that in order for the building to face north, the development would encroach on the 25-foot building setback requirement. Council Member Beck asked if the building could be a smaller design in order to face north, to which architect Mark Hertzfeldt responded that tenants would be eliminated making the project economically unfeasible. City Attorney Vance added that granting a variance from the setback requirement would be unlikely because of the stringent, specific requirements for variances.

Commissioner Kaiman expressed concern that the large building could have a different use in the future. City Attorney Vance advised that all uses in the building would have to comply with the residential zoning district.

Vice Chairperson Burgoyne pointed out that only a few of the neighborhood residents had spoken in opposition to the proposal, so their objections were not a blanket statement of the opinions of the entire neighborhood. He added that the decision on the proposed CBRF was a community decision.

Planner Censky noted that there are no known negative impacts during the decade that the Harrison House has been in operation.

Dennis Eernisse of W72 N679 Harrison Avenue advised that he lived next to the Harrison House. He built his home knowing the CBRF was on the neighboring lot and found them to be excellent neighbors. The facility has not generated traffic, except for maybe an hour for Sunday church services. He has experienced no problems whatsoever.

Council Member Kip Kinzel, representing the 6th District, pointed out that similar proposals in the area were denied on the basis that they did not fit in the neighborhood. The building footprint was too large and driveways should not connect directly to Keup Road. He emphasized that the neighborhood was not attempting to prevent construction of the CBRF; it was only that they wanted it to fit in with the neighborhood.

**Action:**

Vice Chairperson Burgoyne moved to approve the conditional use for the original proposal with the building facing Keup Road and with a circle driveway with both access points on Keup Road, subject to the following conditions:

1. Engineering Department approval of the grading, drainage, stormwater management and erosion control plans.
2. Plan Commission approval of the two access drives as required under Section 6-3-1(b)(7) of the Code of Ordinances.

3. The applicant constructing a 5-foot wide public sidewalk along the Keup Road frontage and being responsible for the construction of a like sidewalk along the frontage of the future street to the north.
4. Sanitary sewer and water service connections to be made off the future street to the north.
5. Payment of all impact fees prior to issuance of a building permit.
6. The applicant shall coordinate utility installation with the construction of the proposed adjacent subdivision and under the direction of the Director of Engineering & Public Works.

**Continued Discussion:**

In response to a question from Commission Kaiman, Vice Chairperson Burgoyne explained that he preferred a circular driveway to a driveway that would have one access point on the proposed new street and one on Keup Road because it worked well with the Harrison House and was consistent with other properties along Keup Road such as Thorson School. Commissioner Brown added that nearby residential properties would not be adjacent to concrete with the circle drive.

Commissioner Emmerich advised that he often is in the area of the Harrison House and has never seen anything that was not consistent with residential use.

Vice Chairperson Burgoyne added that more parking would be available with the site plan than is available at the Harrison House.

**Continued Action:**

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

**PRELIMINARY PLAT APPROVAL REQUEST FOR PROPOSED 51-LOT SINGLE-FAMILY KEUP TRAIL SUBDIVISION LOCATED ALONG THE EAST SIDE OF KEUP ROAD DIRECTLY NORTH AND SOUTH OF THE OZAUKEE INTERURBAN TRAIL – KEUP ESTATES, LLC**

Planner Censky reported that Preliminary Plat approval was sought for the Keup Trail Subdivision proposed for the vacant land along the east side of Keup Road directly north and south of the Interurban Trail. This plat proposes 51 single-family lots ranging in size from 20,005 square feet to 57,704 square feet along two public streets intersecting Keup Road at Covington Square and south of the Interurban Trail. While there is no direct access to Falls Road in Grafton, there will be indirect access through the connection to West Oak Street as is shown on the Official City Map.

Planner Censky advised that, according to Section 14-1-32 of the Subdivision Code and Chapter 236 of the Wisconsin Statutes, the Plan Commission and Common Council shall, within 90 days of the filing of the preliminary plat, approve, approve conditionally or reject the plat. This establishes a deadline for action of January 25, 2007.

Planner Censky noted that the property was rezoned in 2004 to RS-1 Single Family Residential which establishes minimum lot sizes at 20,000 square feet. Review of the preliminary plat indicates compliance with all minimum standards of the RS-1 District. Each lot maintains the necessary minimum lot size, building setbacks and offsets, roadway width, and cul-de-sac size. However, the buildable status of lot 13 and the roadway connectivity are issues of concern to staff.

Planner Censky explained that when the minimum 25' building setback requirements are applied to Lot 13 from the public street and the delineated wetlands, it is left with insufficient area to build a standard single-family home. The developer can either pursue a variance to the setback requirement to allow for an infringement or shift the proposed street slightly to the north. Since it is unlikely that the applicant will be successful in pursuing a variance, he has provided a sketch showing how the plan changes with the northward shift of the road. To pursue a variance, he would need to submit the necessary information and application to the Board of Appeals.

Planner Censky advised that City staff feels that the proposed Covington Square East cul-de-sac should be connected to the cul-de-sac located directly south of the Interurban Trail because cul-de-sacs make it more difficult to plow snow and limits access for emergency vehicles and school buses. In fact, the Public Works and Fire Department personnel expressed preference for connection and City planning staff felt that neighborhoods are better served by increasing connections with through streets and sidewalks. Planner Censky added that discussions with the applicant indicated a willingness to change his plans and submitted a sketch showing how the connection would be handled.

Planner Censky continued that, according to Section 14-1-81 Land Dedication, the developer is required to dedicate 1 acre of land for every 30 lots within the subdivision, which results in a required dedication of 1.7 acres. Prior to the new impact fee law, the Code required payment in lieu of dedication when a public park was not warranted or referenced in the Comprehensive Park and Open Space Plan. With the new impact fee law, cities cannot require this payment in lieu of dedication and, in this instance, the adopted Comprehensive Park and Open Space Plan does not identify a need for a neighborhood park here. Instead, it recognizes that the Keup Trail Subdivision is immediately adjacent to Thorson School, which serves the area with a softball diamond, two soccer fields, one full basketball court, an open play area and children's play equipment area. In fact, the Comprehensive Park and Open Space Plan goes so far as to actually discourage mini-parks because of the high maintenance cost and the fact that they tend to serve only the immediate neighborhood. He noted that the developer indicated a willingness to voluntarily pay the fee in lieu of dedication.

In the conclusion to his presentation, Planner Censky suggested conditions if the Preliminary Plat were to be approved.

Vice Chairperson Burgoyne expressed his preference to retain the cul-de-sacs to preserve the safety of bicyclists using the Ozaukee Interurban Trail and because the roadway pattern would be consistent with the neighboring Georgetown Subdivision. He also felt that there would be less traffic near Thorson School because traffic from the south portion would be forced to exit at Oak Street. Commissioner Kaiman concurred.

Council Member Beck thought the opinions of the Public Works Department and Fire Department should be respected and also felt it was not appropriate to funnel the traffic to the south access point at Keup Road. This would be a small subdivision that would have minimal effect on bicyclist compared to the crossings on Keup Road or Washington Avenue.

Vice Chairperson Burgoyne and Commissioner Kaiman noted that similarly-designed subdivisions have accommodated emergency vehicles when necessary.

In response to a question from Mayor Myers, Planner Censky advised that the developer was negotiating with the Village of Grafton regarding acquisition of the Falls Road extension right-of-way.

Council Member Kinzel agreed with both arguments concerning the roadway configuration, so he would defer to the Plan Commission. He noted, however, that the current proposal was a more palatable design than any of the previous ones.

**Action:**

A motion was made by Vice Chairperson Burgoyne, seconded by Commissioner Emmerich, to recommend Common Council approval of the Preliminary Plat with the two cul-de-sacs subject to the following conditions:

1. Sanitary sewer lines and watermains are to be extended to the property lines.
2. This project shall be supported by the full compliment of improvements typical of all subdivisions in Cedarburg.
3. The developer shall be responsible for constructing the West Oak Street connection to Bobolink Avenue.
4. The developer shall be responsible for the complete street construction and street trees installation for that stretch of new roadway directly across from Covington Square.
5. A Lake Maintenance Agreement shall be submitted and approved by the Plan Commission.
6. The FAR and Lot Coverage Percentage shall be in accordance with the requirements of the RS-1 District.
7. The applicant shifting the street to the north as shown on his sketch to provide more room on Lot 13.
8. The applicant shall be required to install public sidewalks along the Keup Road frontage.
9. Submittal and Engineering Staff approval of the grading, drainage, stormwater, and erosion control plans.
10. The applicant acquiring the 50-foot strip of land from the Village of Grafton and incorporating it into this project prior to final plan submittal.

**Continued Discussion:**

Council Member Beck advised that she would vote to recommend approval only to move the issue for Common Council consideration, but still had concerns regarding the cul-de-sacs. Commissioner Kaiman stated that he was pleased with the variety of lot sizes in the proposed subdivision. Commissioner Emmerich felt that the cul-de-sac would also minimize the traffic in relation to the previously-approved CBRF. Commissioner Brown expressed anxiety on the final configuration of Lot 13 and would prefer to defer action until the issue was resolved.

**Final Action:**

The motion carried without a negative vote.

**SITE PLAN AMENDMENT TO EXPAND PARKING LOT AT N144 W5800 PIONEER ROAD – MIKE LA ROSA**

Planner Censky explained that the La Rosa Landscaping Business occupies the former Cedarburg Lumber Company site and only uses a portion of the building with the remainder being leased to other businesses. Having conducted their operations from the site since early last summer, they found that more parking is needed to support the site activity and parking demands of all tenants.

Review of La Rosa's original plans indicates that the parking lot expansion was shown but he was not prepared to generate the necessary stormwater management studies and plans to support this expansion. He has since generated the stormwater management plans and has submitted it for review by City Engineer Wiza.

Planner Censky continued that the plans proposed to extend the existing parking lot south of the building west toward the railroad tracks and then to the north. A new chain link fence will extend around the westerly portion of the new asphalt and connect to the existing chain link fence along the west property line to secure his business staging area. The plans fully comply with the dimensional requirements of the Zoning Code and the Stormwater Management Ordinance. Planner Censky provided some conditions that should be applied to any approval.

**Action:**

Council Member Beck moved to approve the requested site plan amendment conditioned upon the following:

1. City Engineer completing his review and approval of the stormwater management, grading, drainage, and erosion control plans.
2. The stormwater management system being installed under the direction of the City Engineer.
3. Submittal and staff approval of a detailed landscape plan showing appropriate screening along the south side of the new asphalt parking and chain link fencing.

The motion was seconded by Commissioner Kaiman and carried without a negative vote.

**REVIEW AND RECOMMENDATION PERTAINING TO REVISED FLOODPLAIN ORDINANCE**

Planner Censky advised that the Wisconsin Department of Natural Resources (WDNR) and Federal Emergency Management Agency (FEMA) has recently revised the Wisconsin floodplain ordinance and they are requiring that communities adopt this model ordinance. The revision was done to incorporate changes to conform to recent Administrative Code changes in NR 116, Wisconsin Supreme Court cases, and minimum standards of the National Flood Insurance Program regulations found in 44CFR, Part 60. These ordinance changes have been reviewed and approved by FEMA's Chicago Regional Office.

Planner Censky continued that the General Floodplain includes the areas that have been or may be covered by floodwater during a regional flood (i.e. 100-year flood). It consists of the floodway, which is the channel of a river or stream, and those portions of the floodplain adjoining the channel required to carry the regional flood waters and the floodfringe, which is that portion of the floodplain between the regional flood limits and the floodway. Accordingly, this new ordinance will replace the City's corresponding Section 13-1-66 FWO, Cedar Creek Floodway Overlay District, Section 13-1-67 FCO, Floodplain Conservancy Overlay District, and Section 13-1-68 FFO, Floodplain Fringe Overlay District.

Planner Censky added that the City has been advised that failure to adopt this ordinance could result in suspension from the National Flood Insurance Program (NFIP). If a community is suspended from NFIP, it is subject to the provisions of Section 202(a) of Public Law 93-234, which prohibits federal officers or agencies from approving any form of loan, grant, guaranty, insurance

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payment, rebate, subsidy and disaster assistance loan or grant, for acquisition or construction purposes within the floodplain areas. The ordinance would then be scheduled for public hearing before the Common Council in January.

Commissioners questioned whether all the language in the proposed Ordinance was appropriate for the City of Cedarburg. Commissioner Brown suggested that the permitted uses in the old Cedarburg Code be added to the new ordinance. Planner Censky clarified that the uses have remained unchanged.

**Action:**

A motion was made by Commissioner Brown, seconded by Commissioner Emmerich, to recommend the revised Floodplain Ordinance. Commissioner Brown amended the motion to add "subject to review by the City Attorney and City Planner before going on to the Council." The amended motion was seconded by Commissioner Emmerich and carried without a negative vote.

**ESTABLISH JANUARY 2007 MEETING DATE**

The Plan Commissioners established Monday, January 15, 2007 as the next meeting date.

**MAYOR'S ANNOUNCEMENTS**

Mayor Myers had no announcements.

**ADJOURNMENT**

Commissioner Schara moved to adjourn the meeting at 9:08 p.m. The motion was seconded by Commissioner Brown and carried without a negative vote.

Darla Drumel,  
Administrative Secretary