

## PLAN COMMISSION

PLN20060605-1  
UNAPPROVED MINUTES

June 5, 2006

A regular meeting of the Plan Commission of the City of Cedarburg was held on Monday, June 5, 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

Also Present - City Administrator Patrick Boyle, City Attorney Kaye Vance; City Planner Jon Censky; Planning Consultant Marty Marchek, 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 to approve both the minutes of April 24, 2006 and May 1, 2006. The motion was seconded by Commissioner Brown and carried without a negative vote.

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

No comments or suggestions were offered at this time.

### **REVIEW AND POSSIBLY RECOMMEND AMENDING THE LAND USE PLAN FOR THE RETTMANN TRUST PARCEL LOCATED AT THE NORTHWEST CORNER OF STH 60 AND CTH I, THE BAEHMANN PARCEL LOCATED AT W73 N1122 WASHINGTON AVENUE, THE CLYDE WIRTH PARCEL AT THE SOUTHEAST CORNER OF HIGHWAY 60 AND SHEBOYGAN ROAD, AND THE STROEBEL PARCEL LOCATED IMMEDIATELY SOUTH OF THE CLYDE WIRTH PARCEL.**

Planner Censky reminded Commissioners that after reviewing several land use options last August for the 60-acre Rettmann Trust parcel located northwest of the State Highway 60 and County Trunk I intersection, it was decided to apply the Business Park classification over the entire parcel. Since that meeting, the property owner, Mrs. Dippmann, has expressed concerns about devoting the entire parcel to business uses. Coupled with the owner's concern is the question of whether it is wise to have the development of this business park competing with the City's own business park across Highway 60 and the concern about the absorption rate for two adjacent business parks competing with the development activity occurring along I-43 in Grafton or I-41/45 in Slinger.

Planner Censky explained that In the process of considering Mrs. Dippmann's (Rettmann Trust Property) request, Mr. Marchek determined that any change to the land use classification of the Rettmann Trust parcel will have an impact on the Baehmann parcel and also affects the type of Tax Incremental District (TID) the City can create.

Planner Censky continued that the City had been pursuing an Industrial TID where at least 51% of the lands within the District must be devoted to and zoned for industrial-type land uses. With the

proposed change to residential for the Rettmann Trust property, the District falls short of the 51% minimum industrial land use requirement and an industrial TID cannot be created. The City then must consider creating a Mixed-Use TID instead. Mixed-Use TIDs are intended to promote a mix of commercial, industrial and residential uses with a requirement that a maximum of 35% of the lands within the district be devoted to newly-platted residential uses. Also, all residential areas within a mixed-use district, where any TID projected costs are expended, must maintain a density of at least 3 units per acre, or the residential housing is within a conservation subdivision, or the residential housing is within a traditional neighborhood development.

Planner Censky noted that because the northern two thirds of the Rettmann Trust property was now proposed to be devoted to residential uses, the Land Use Plan for the Baehmann lands must also change to reduce the amount of land devoted to residential uses. The mixture of uses, however, remains the same with single-family uses shown immediately north of the Parkview Meadows Subdivision and two-family north thereof serving as a transition to the Office/Service category at the north end of the Baehmann site. Planner Marchek also discovered that the area of the Stroebel parcel devoted to multi-family uses is reduced due to environment corridor lands, so 5 acres of the Wirth's commercial area directly north is recommended to be reclassified to multi-family uses to compensate.

Mr. Marchek advised that the Land Use Plan review being done at this time was because of the project planning that goes into creating the Tax Incremental District (TID) that is anticipated for the newly-annexed areas on the north side. Several types of TID are possible: Blight Elimination, Industrial, or Mixed-Use and when you create a TID you have to declare it as one of the three types. Each type has different statutory requirements.

Mr. Marchek noted that when the City began planning for a TID, the City choose an Industrial TID, with a statutory requirement that 51% of the land is zoned industrial for the life of the District. The City annexed 224 acres and a minimum of 112 acres would have had to be zoned industrial, and were easily at the 51% mark with the City's approximate 60-acre business park and the Rettmann Trust parcel of approximately 60 acres. Mrs. Dippmann, trustee of the Rettmann property, then requested that it be primarily residential. The requirement of 51% industrially-zoned lands was no longer met and the other alternative was to create a mixed-use district.

Mr. Marchek explained that the mixed-use district restricts residential to a maximum of 35%, so the land use on the Baehmann property was reallocated from residential to the industrial and business classifications. The taxable valuation (land and improvements) per acre for residential multi-family and duplex is approximately \$1.4 million per acre compared to \$450,000 per acre for industrial and commercial. The residential must be optimized at 35% to pay back debt the district would incur.

Mr. Marchek reviewed the logic for the proposed land uses noted on the map distributed at the meeting. About 20 acres at the northeast corner of the Baehmann parcel was reallocated to the M-3 Business Park District. The C-2 Conservancy is a 7-acre wooded wetland area, identified on the Department of Natural Resources (DNR) wetland maps that would have no tax valuation. The golf driving range would be RS-3 Single-Family Residential District, which would be an extension of Parkview Meadows No. 4. An east-west collector street would intersect Washington Avenue at Quail Court and continue east to connect with an interior collector street in the City's Business Park. A southward Hilltop Drive extension is also proposed to intersection with the east-west collector street. Approximately 23 acres are depicted as B-4 Office and Service District adjacent to the north line of the Baehmann property and an approximate 5 acres RD-1 Duplex Residential District along the north side of the proposed east-west collector street. He believed that the proposed land uses provided appropriate transitions to the City's Business Park.

Mr. Marchek continued that the Rettmann parcel north of Highway 60 is shown as RS-3 Single-Family Residential to meet the requirement that there must be at least 3 residential units per acre. It does not have to be the RS-3 zoning district, but could be accomplished through a conservation subdivision allowed by State Statute. The map also shows Office and Service District along the Highway 60 frontage with an east-west street splitting the Rettmann site opposite an existing street intersection serving the subdivision on the east side of CTH I.

Mr. Marchek noted that other plan changes are proposed on the Stroebel and Wirth properties because there is a 5-acre C-2 Conservancy on Mr. Stroebel's site that is a Primary Environmental Corridor on the Southeastern Regional Planning Commission (SEWRPC) maps, which prohibits structures but can be used to leverage density. To compensate for the 5-acre loss, a strip on the Wirth property is proposed for RM-2/PUD (multi-family residential/planned unit development) to optimize the residential element of the TID. The RD-1/PUD (duplex residential/planned unit development) is what Mr. Stroebel had intended for that area. All along, the intent was to transition from single-family to two-family to multi-family.

Mr. Marchek explained that when a TID project plan is developed, which is a document to create the District, it must include a zoning plan and a plan for proposed uses. The lands must be zoned prior to creation of the TID for an industrial district but do not have to be zoned prior to creation of a mixed-use district. Planner Censky added that an annual report is required confirming that the zoning is consistent with the project plan.

In response to a question from Commissioner Kaiman, Mr. Marchek noted that the single-family, duplex, multiple-family and senior housing are all included in the 35% residential maximum. The residential districts must have at least 3 units per acre or be a conservation subdivision; duplex districts typically have 6 units per acre. Approximately 80 acres would be Business Park District including the City's land and the Baehmann property. The commercial and office frontages on the Rettmann parcel and the Wirth property would be approximately another 25 acres. There are approximately 12 acres of conservancy.

Council Member Beck requested clarification on the conservation subdivision density requirement. Mr. Marchek explained that the City's Code for conservation subdivision requires at least 50% common open space. Mr. Marchek continued that the State Statutes require 3 residential units per acre in a mixed-use TID OR a conservation subdivision, so conservation subdivisions do not have to have a density of 3 units per acre. Planner Censky added that the PUD Ordinance could also be applied to create a conservation subdivision. He also noted that if a proposal for a conservation subdivision was proposed, the City would have to ascertain that it would have the same value as the RS-3 District development. Mr. Marchek pointed out that if a TID is created, the primary issue is the valuation per acre, and it is not important if that is accomplished with 3 units per acre, a conservation subdivision, or a PUD.

City Attorney Vance read from the State Statutes that stated a conservation subdivision means a housing development in a rural setting that is characterized by compact lots and common open space, where the natural features are maintained to the greatest extent possible. The density and lot size standards of a conservation subdivision are as required in the underlying zoning district.

Planner Censky stated that there is no benefit in terms of density with the City's conservation ordinance, but introducing a PUD would preserve the open spaces and natural amenities, and reduce the lot size and cluster the lots. City Attorney Vance added that the PUD does not establish the lot density; the underlying zoning does.

Mr. Marchek reminded Commissioners that although a plan for zoning is required, creation of a mixed-use TID does not require pre-zoning the parcels. The City would have the ability to tell a developer if an RS-3 Conservation Subdivision is desired. It was clarified that the RS-3 District allows a maximum of 3.6 residential units per acre and the RS-2 District would not meet the requirement for 3 units per acre.

Commissioner Kaiman pointed out that on a 41-acre parcel, the RS-3 would result in 147.6 homes.

In response to a question from Council Member Beck, Planner Censky advised that if a conservation subdivision was submitted for approval, the City could choose the base district based on the density that is proposed related to a specific plan. Mr. Marchek added that with a conservation subdivision, the 3 units per acre requirement does not apply. Planner Censky added that it is not possible to pre-zone a PUD; a conservation subdivision cannot be introduced at this time. He suggested that the plan might read RS-3 or Conservation Subdivision, and restated that the Land Use Plan was not zoning the property.

Mr. Marchek noted that he labeled the residential as RS-3 so it was clear what would be required under the State Statutes for a TID, because there is no certainty with a conservation subdivision until the Plan Commission and the Common Council are willing to approve the zoning. He pointed out, however, that the RS-3 replicates Cedar Pointe, Maple Manor—replicates how a major portion of the City's residential neighborhoods look.

Commissioner Brown opined that creating 147 home sites is not what the City should be doing. Commissioner Kaiman disagreed with creating a TID to promote residential development. He noted it was an eye opener to see how much residential is necessary to make the financials work in maximum fashion.

Mr. Marchek pointed out that the mixed-use TID in the south end of the City, which included senior housing, four-family structures and duplexes, was very successful. The residential element of that TID produced some of the richest, most intense tax base for that development compared to the industrial and office buildings.

Vice Chairperson Burgoyne pointed out that the residential commonly is used in a TID to start the payback up front.

Mr. Marchek then advised that the Governor recently signed a new impact fee law that will require revisiting the whole financial proforma for the TID. The proforma included impact fees of approximately \$1.2 million to be collected at the time of platting within the first 5 years of the District. The new law will only allow collection of impact fees at the time building permits are issued, so the initial infusion of funds will not exist. He expected that the amortization period of the TID would be longer and would likely increase the initial amount to be borrowed.

Council Member Beck asked whether the zoning would be RS-3 or a conservation subdivision, there would be 147.6 houses. Mr. Marchek responded that no, RS-3 is representative of three units per acre or more. If a developer came in with a conservation subdivision with larger lots, the underlying zoning does not have to be RS-3 zoning, even in a TID. Mr. Marchek cautioned that ambiguity regarding the density would reduce the integrity of the detail on the Land Use Plan map and cause developers to question what entitlements go with the land. He added that there are many RS-3 subdivisions in the City that are very highly desirable places to live. The City could make a case that the Rettmann parcel would be a transition to a truly rural area, most of it already developed, and should not look like an urban subdivision. The definition read by City Attorney

Vance stated "in a rural setting." So RS-3 does not have to be placed on the map; it could read "Conservation Subdivision—Density to be Determined at a Later Date" or put in a range of density.

Vice Chairperson Burgoyne noted that there has been a clear trend in the last year that conservation subdivisions have great appeal and a developer would be attracted to the Rettmann parcel for that purpose. Commissioner Kaiman opined that recently approved subdivisions were not conservation subdivisions and a developer would seek to develop as many residential units in these areas as possible.

Commissioner Brown suggested the plan be reviewed without including the Rettmann parcel in the TID. If it developed on its own, the City would receive taxable valuation much quicker.

Mr. Marchek noted that it may be possible to revert to an industrial TID under that scenario. He cautioned that the valuation would drop considerably with that change, noting that the Rettmann parcel developed commercially would be valued at \$21.6 million and residential development with commercial frontage would be valued at about \$42 million. In a TID, the City would receive 100% of the tax revenue until the debt is amortized, but if the Rettmann parcel is removed completely, it would be disbursed to the School District, County, etc. Mr. Marchek added that the City would be funding the infrastructure needed to allow the private property owners to develop their land, not the School District or the County.

Commissioner Brown countered that the disbursements to the School District, etc. were appropriate, noting that the taxpayer would pay the School District costs in the interim. He believed that developers would be looking at the RS-3 on the Land Use Plan and would not even consider a conservation subdivision. They would put in as many homes as they can to maximize their profit, and it would also maximize tax revenue, if that is what the City wants. Commissioner Brown also noted that although Mrs. Dippmann's request for residential development was proposed, it reduced the residential element of the Baehmann property.

Mr. Bud Baehmann, of N73 W1122 Washington Avenue, advised that the change from residential cut the value of his property quite a bit. He added that he was unaware of the new proposal until a few days ago, and has not yet met with his counsel for an analysis.

Mayor Myers acknowledged that there was not much notice and the current discussion was for possible recommendation. He was uncomfortable with making any recommendation and, with significant questions regarding financing due to the change in the impact fee law, the proposal may have to be reworked. Also, the Council needs to be updated on the changes in the plan before the Plan Commission makes any recommendations.

Vice Chairperson Burgoyne thought it made sense for the City and the property owners to meet, as well as research the changes in the impact fee law and its impact on the financial feasibility of the TID.

City Administrator Boyle advised that the City has done some sensitivity analysis without the Rettmann property, but it was done a long time ago and would need to be re-analyzed.

City Attorney Vance cautioned that the full impact of the new legislation is not known and referral to Ehlers be delayed. City Administrator Boyle advised that his plan was to wait a week and then check with Ehlers on whether they feel they have enough information on the new law to rework the numbers. Commissioner Kaiman advised that he has seen detailed factual information provided by the Board of Realtors and suggested contacting Mike Ruzica.

Mayor Myers summarized that Mr. Marchek and Planner Censky need to meet with the landowners. Some landowners annexed to the City with expectations to develop their lands in accordance with the Land Use Plan and they need to be comfortable with any changes. The Economic Development Committee also needs to be apprised of the latest projections and changes.

Commissioner Kaiman requested ongoing updates so that there is time to fully review them between meetings. Mr. Marchek agreed to provide status reports.

**PUBLIC HEARING REGARDING 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**

Mayor Myers declared the public hearing open at 7:50 p.m. Administrative Secretary Drumel confirmed the proper legal notice had been given.

Planner Censky advised that Mr. Grainger was seeking conditional use approval for plans to expand the existing North Shore Academy of Gymnastics located at W59 N270 Cardinal Lane because of the growth in enrollment that has occurred over the past several years. City records indicate that this gymnastics academy was originally approved by the Plan Commission in 1987. The building expansion is proposed off the south elevation and will result in 5,850 square feet of additional gym space and 1,374 square feet of storage and customer viewing area. Planner Censky noted that the site plan covers two separate parcels and those parcels will need to be combined into one before a building permit can be released for this project.

Planner Censky stated that the expansion plans will be an upgrade to the existing building simply because of the change from steel siding material to a more decorative block material. The main section of this addition will match the height of the existing building at 32 feet and that height drops to 17 feet and 15 feet for the extensions off the west elevation. The rounded extension will be of smooth face masonry block with vertical windows, the extension to the south of split face concrete block, and the main section will be of split face concrete block with smooth CMU banding. The addition will be of earth tone colors to compliment the beige of the existing building.

Planner Censky added that the plans also include an expansion of the parking lot from 40 spaces with one access drive to 94 stalls with two drives. The same individual owns both sites and the parking will serve both the Gymnastics Academy and the Tae Kwon Do facility to the south. The northerly drive would lead to a drop off area adjacent to the front entrance door of the Gymnastics Academy. The parking lot will be lit with directional luminaries directing light downward to prevent light trespass onto adjacent property or public right-of-way. The plan proposes 4 double-throw and 3 single-throw fixtures mounted on poles within the parking lot. Planner Censky noted that the applicant needed to submit lighting cut-sheets to determine the make, style, intensity and height of all light fixtures.

Planner Censky explained that the landscape plan is intended to functionally screen the parking lot while aesthetically enhancing the view from off-site. Plantings of red-twig dogwood bushes, punctuated by Black Hill Spruce trees, are proposed along the south limits of the parking lot. Proposed plantings would continue with red-twig dogwood along Cardinal Lane, incorporating native grasses as ground vegetation and three Norway maple trees for scale. Low growth spirea and higher growth Newport plum trees highlight the entrance to the drop off zone in front of the building. The islands within the parking will each have a skyline honey locust tree and two spirea bushes. Planner Censky reported that the landscaping plan is in full compliance with the green space and tree count requirements.

Planner Censky continued that the site plan shows 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. While City Engineer/Director of Public Works Tom Wiza has been communicating with the applicant's engineer on the storm water management requirements, a detailed management plan has not been submitted. Without this plan, approval cannot be recommended.

Planner Censky suggested, since the storm water management plans have not been received, that Commissioners table the plans pending submittal of the detailed grading, drainage, and storm water management plans. Furthermore, the property owner needs to supply lighting cut-sheets to determine the make, style, intensity and height of all light fixtures, and is on notice that the two lots will need to be combined into one.

Council Member Beck was pleased that the business was doing so well, and the addition was necessary.

In response to a question from Commissioner Brown, Planner Censky confirmed that the Gymnastics Academy and parking lot are currently on two separate lots. The Tae Kwon Do building is on a third parcel. Mr. Grainger advised that the property owner, Doug Lane, was reluctant to join the two lots unless the project was approved. He added that he would proceed only if the project approved by the Plan Commission was within his budget.

Commissioner Kaiman questioned whether the Gymnastics Academy would be responsible for installation of sidewalk along Cardinal Avenue the length of the two parcels. Planner Censky would seek verification of that issue with the Director of Engineering & Public Works.

Commissioner Brown asked if there was an advantage to the placement of a new curb cut directly across from an existing driveway. Planner Censky responded that the standard was to line up curb cuts to reduce the number of conflict points along a street. Offsets create greater problems with exiting traffic.

Commissioner Brown agreed with Council Member Beck that the North Shore Academy of Gymnastics has been a great asset to the Cedarburg community and anything the City can do to facilitate the project would be in the City's best interest.

Mike Wroblewski, of 1528 Cedar Creek Parkway, Town of Cedarburg, advised that his daughters are enrolled in the Academy and he fully supported the proposed improvements.

**Action to Close Public Hearing:**

Commissioner Brown moved to close the public hearing at 8:05 p.m. The motion was seconded by Vice Chairperson Burgoyne and carried without a negative vote.

**Continued Discussion:**

Commissioner Kaiman cautioned that people are used to parking on the street and the drop-off zone might encourage them to use the off-street parking. In response to questions from Commissioner Kaiman, the applicant's architect advised that currently there is little parking available for the Tae Kwon Do site and the building is quite close to the proposed parking. The Tae Kwon Do business owner would pay for any sidewalk from the parking lot to the building. If Commissioners desired that the expanse of the parking lot be reduced, they would be willing to change their plans. He pointed out, however, that the spaces may be used for special events where there will be more spectators.

**Action:**

A motion was made by Commissioner Brown, seconded by Vice Chairperson Burgoyne, to conceptually approve the conditional use grant amendment for the expansion plans for North Shore Academy of Gymnastics at W59 N270 Cardinal Avenue subject to the following conditions:

1. Investigating issue of a sidewalk extension to determine responsibility.
2. Submission of lighting cut-sheets to determine the make, style, intensity and height of all light fixtures.
3. Submittal of the detailed grading, drainage, and storm water management plans.
4. The two lots be combined into one.

The motion was seconded by Vice Chairperson Burgoyne and carried without a negative vote.

**PUBLIC HEARING REGARDING CONDITIONAL USE REQUEST TO OPERATE A LANDSCAPE COMPANY AT N144 W5800 PIONEER ROAD WITH SITE AND LANDSCAPE MODIFICATIONS- LA ROSA LANDSCAPE COMPANY**

Mayor Myers declared the public hearing open at 8:07 p.m. Administrative Secretary Drumel confirmed that proper legal notice had been given.

Planner Censky noted that Mr. La Rosa was not present and was probably responding as a volunteer firefighter to a working fire.

Planner Censky advised that landscape contracting business was added by unanimous vote of the Common Council as a conditional use to the M-2 Zoning District. Consequent to that action, Mr. La Rosa was seeking conditional use approval for his landscape contracting use of property located at N144 W5800 Pioneer Road, (the former Cedarburg Lumber site), along with approval for some minor site modifications. He proposed to install an above-ground fuel tank at the west end of the site to serve his fleet of vehicles. The landscape plan proposed higher growth Japanese lilac trees along the front building façade with a mixture of low growth shrub roses, pennisetum, and seasonal annuals, among others.

Planner Censky pointed out that the site is located within an established manufacturing/industrial neighborhood, along a major highway, adjacent to the railroad tracks, and suggested stipulations if approved.

Vice Chairperson Burgoyne asked if any screening would be installed for the proposed above-ground fuel storage tank. Planner Censky responded that it would be placed within a fenced area about 25 feet from the railroad right-of-way, and believe it would not be apparent to Pioneer Road traffic.

Council Member Beck asked if there were any safety issues associated with the above-ground fuel storage tank. Planner Censky advised that Fire Chief Van Dinter reviewed and approved the proposal. Planner Censky added that the State of Wisconsin has legislated that all new fuel tanks are installed above-ground to identify fuel leaks immediately. In response to a question from Commissioner Brown, Planner Censky stated his belief that the above-ground storage tank must be installed on a hard impervious surface to prevent infiltration of fuel if there ever was a leak. He added that the installation would be under the oversight of the Cedarburg Fire Department and the Wisconsin DNR.

Planner Censky continued that, to his knowledge, there are no plans for expansion of the existing building but Mr. La Rosa was advertising to build to suit in that location to potentially sell off the area out front. He advised that any proposal for that location would require City approvals.

Commissioner Brown expressed concern that dust would be generated by the gravel on the site. Planner Censky noted that a conditional use approval could include provisions to address dust if the issue arises.

No questions or comments were offered by the public.

**Action to Close Public Hearing:**

Commissioner Brown moved to close the public hearing at 8:20 p.m. The motion was seconded by Commissioner Emmerich and carried without a negative vote.

**Action:**

A motion was made by Vice Chairperson Burgoyne, seconded by Council Member Beck, to approve the Conditional Use Grant to allow La Rosa Landscape Company to operate a landscape company at N144 W5800 Pioneer Road subject to the following:

1. Hours of Operation: 6:00 a.m. to 8:00 p.m. Monday through Saturday  
None Sunday
2. Any substantiated material problems with parking, traffic circulation, noise, unsightly conditions or other Code infractions as a result of this use shall be corrected immediately upon notification.
3. Storage of equipment, supplies and bulk material shall be located where it is not readily apparent from off-site.

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

**CONSIDER A CERTIFICATE OF APPROPRIATENESS FOR CONSTRUCTION OF A PERGOLA, RAILS AND PIERS, AND PROVISION OF MINOR LANDSCAPE TREATMENTS AT W62 N605 WASHINGTON AVENUE – MIKE WROBLEWSKI**

Planner Censky explained that Mr. Wroblewski was seeking Certificate of Appropriateness for exterior site work to separate the outdoor seating area from pedestrian traffic along Washington Avenue. This work will include replacing the existing low fence around the perimeter of the seating area south of the building with a pergola assembly and lattice panels with decorative fencing. The lattice panels will end at a point matching the plane of the front building façade and the lower decorative fence will extend east from there to the public sidewalk and then north to the front building porch steps. The decorative fence will also continue north of the front steps to a point and then extend west to the building. To support the fence, the plan proposes cream city brick piers capped with limestone material. The existing concrete surface south of the building and the crushed granite stone in front, within these fenced in areas, will be replaced with rummaged brick pavers and Lannon stone border.

Planner Censky advised that the request was reviewed by the Landmarks Commission and unanimously approved subject to:

- The lattice is to be flat (no arches) across the top with any size openings.
- The lattice treatment can extend up to the overhanging pergola if the owner wishes.
- The pergola shall be attached to the building only at the mortar joints (not through the brick).

Commissioner Brown suggested that adequate space for seating was not available in front of the building. Mr. Wroblewski responded that the fenced area in front of the building would be about 6 feet wide and would accommodate limited seating. The lattice would be augmented with hanging plants and clematis.

In response to a question from Council Member Beck, the building owner advised the decorative lower fence would be less than 3 feet high. The brick piers would be about 36 inches high without the cap. The lattice panels would be the same height as the back porch. Mr. Wroblewski added that the lattice panels would screen the view of the air conditioning unit and weeds of the building to the south. Council Member Beck expressed concern that there would be problems with the enclosed area because of customers desire to be seated in the open. Mr. Wroblewski believed that he would be providing both open seating and more enclosed seating for his customers. Planner Censky added that the lattice would have openings of approximately 5 inches. The building owner advised that the improvements were designed to encourage outdoor seating by creating an open air feeling while providing different settings.

**Action:**

Vice Chairperson Burgoyne moved to approve the Certificate of Appropriateness for the construction of a pergola, rails and piers, and provision of minor landscape treatment for Fiddleheads at W62 N605 Washington Avenue subject to the following Landmarks Commission recommendations:

- The lattice is to be flat (no arches) across the top with any size openings.
- The lattice treatment can extend up to the overhanging pergola if the owner wishes.
- The pergola shall be attached to the building only at the mortar joints (not through the brick).

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

**CONSULTATION REGARDING PROPOSAL TO CONVERT OFFICE BUILDING AT W62 N556 WASHINGTON AVENUE TO A BED & BREAKFAST – COLUM MAC CARTHY**

Planner Censky advised that Mr. Mac Carthy was requesting consultation regarding his proposal to operate a Bed and Breakfast from the 1880 Victorian home located at W62 N556 Washington Avenue. The house is located in downtown Cedarburg on the east side of Washington Avenue, immediately north of the Mac Carthy's Irish Pub. According to the Zoning Code, Bed and Breakfast facilities are permitted as Conditional Uses in the B-3 District. Before investing in plans and submitting an application for conditional use consideration, Mr. Mac Carthy wanted to get feedback to determine whether the request would be met with support.

Planner Censky reported that the building was originally constructed for residential purposes and then was converted to commercial use, which currently supports legal offices. Since this structure is located in the downtown Historic District, any change to the exterior will require both Landmarks and Plan Commission approval. Ultimately, if Mr. Mac Carthy elects to pursue the project, a public hearing on the conditional use request would be scheduled at a future Plan Commission meeting.

In response to a question from Commissioner Kaiman, Mr. Mac Carthy advised that the proposal was for 6 units within the 5,800 square foot building. Council Member Beck asked about the availability of parking and Mr. Mac Carthy explained that there was no parking with the building but he would pursue the possible use of neighboring parking if the conditional use request received a favorable response.

In response to a query regarding the appropriateness of the use, Planner Censky noted that the Plan Commission directed a petitioner for a previous bed & breakfast request along Washington Avenue to consider establishing one in the downtown area. He pointed out that off-street parking requirements could be met because Mr. Mac Carthy owns the property to the south of this building.

Mayor Myers asked how the off-street parking requirement for the current office use of the building was met. Planner Censky advised that the Code for the downtown area does not require off-street parking because it recognizes that many of the buildings preceded the automobile and parking space for each use is not available.

Commissioner Brown believed that the room tax cap for the City was 100. It was raised when the number of rooms exceeded 50.

Council Member Beck considered the use appropriate for the site, especially if parking would be available on the lot to the south. She did have an objection to the name and Mr. Mac Carthy noted that the name on the application would not be the name of the business.

Mayor Myers summarized that the Plan Commission conceptually approved the idea of establishing a bed and breakfast business in the building at W62 N556 Washington Avenue.

**REQUEST FOR PRELIMINARY PLAT APPROVAL AND REZONING RECOMMENDATIONS FOR PROPOSED SEVEN GABLES 52-LOT SINGLE-FAMILY SUBDIVISION LOCATED SOUTH OF HWY 60 ALONG THE EAST SIDE OF SHEBOYGAN ROAD**

Planner Censky reminded Commissioners that the proposed 54 lot single-family Planned Unit Development (PUD) project for this recently annexed parcel was conceptually reviewed at the January 5, 2006 meeting. While Commissioners generally found the design to be attractive, there were a few who preferred the project to be less dense. In response, the number of lots was reduced by two lots and the preliminary plat was submitted for approval and rezoning recommendation from temporary RS-1 to permanent RS-7(PUD). The preliminary plat was received on May 22, 2006, which starts the 90-day review clock ticking for the plat to be either approved, approved with conditions, or rejected. If action is not taken, the plat will automatically be deemed approved. Accordingly, the Plan Commission has until August 18, 2006 to take action.

Planner Censky explained that In order to be consistent with the Comprehensive Land Use Plan, the subdivision is designed as a PUD where lots are reduced from the lot size standards of the 20,000 square foot RS-7 base Zoning District and clustered along a curvilinear road design where the natural environmentally-sensitive lands are preserved. It results in 52 lots on 49.25 acres for a density of 1.06 units per gross acre, which is consistent with the density recommended by the Land Use Plan. While MLG owns the 25 foot strip of land to the north connecting to the Town, it is not technically part of the plat because it remains in the Town of Cedarburg. Since the ownership of that land will be transferred to the association when the plat is recorded, it has been used for density calculations. The lots all exceed the 13,500 square foot minimum size limit and are located on the upland portion of this property out of the floodplain and primary environmental area. As is also recommended by the Land Use Plan, this subdivision will include a walk/bike path extending through the forested open space area along Cedar Creek and a neighborhood park is to be located within the upland open space area behind the lots located along Seven Gables Circle.

Planner Censky noted that although approvals are requested at this time, the developer understands that public utilities (i.e., sewer and water) are not currently available and actual development of the project may not commence until the City's sanitary sewer main line located on the east side of Cedar Creek is extended across or under the Creek to serve this and other future

development to the west, including the City's pending business park, and construction of a lift station on the west side of Cedar Creek at this location is completed.

Planner Censky reviewed the request for a RS-7 base Zoning District (minimum lot size 20,000 square feet) with a PUD overlay for the Seven Gables Subdivision, which allows for the reduction in lot size and width requirements and clustering of those lots in order to preserve and protect natural amenities. The same zoning was applied to both the TopView Trails and Prairie View subdivisions along Wauwatosa Road. PUD overlay zoning is the one district that is tied to a specific plan and any significant change to that plan, once approved, does require the applicant to repeat the approval process. If the RS-7(PUD) Zoning is recommended, a public hearing will be scheduled for an upcoming Council meeting.

Planner Censky continued that, according to Code, the Floor Area Ratio (FAR) and Lot Cover Percentage (LPC) for PUD projects are to be specified on a case-by-case basis as a project goes through the approval process. Since PUD projects result in the preservation of open spaces, the intent of this Ordinance is to recognize that and not be overly restrictive on home size controls. To be consistent with the home size controls established for the aforementioned subdivisions along Wauwatosa Road, he suggested that the FAR of 36% and a LCP of 25% would be appropriate. Planner Censky also provided the following stipulations of approval for the Plan Commission's consideration:

- Approval of the preliminary plat shall be effective only upon the extension of the sanitary sewer system under Cedar Creek and a lift station being constructed on the west side of the Creek.
- This project shall be supported by the full compliment of improvements typical of all subdivisions in Cedarburg (i.e. curb & gutters, sidewalks, street trees, etc.).
- An open space and lake maintenance plan shall be submitted and approved by the Plan Commission prior to final plat approval.
- The FAR = 36% and LCP = 25%.
- Engineering Department review and approval of the grading, drainage, stormwater management, and erosion control plans.
- Provision of a 20'-wide public trail access easement through the Environmental Corridor as shown on the preliminary plat.

Mayor Myers asked why the City should be considering preliminary plat approval, considering there is no way of knowing when work on the TIF district could commence because of the recent legislation signed into law by Governor Doyle limiting the rights of municipalities to impose and collect impact fees. He added that if the developer wanted to commence with the project, it would make sense if the developer paid for the installation of the sewer lift station and the sewer and water extensions. Because of the approved impact fee legislation that the developer wanted, the City has no idea when its business park project would go forward.

Commissioner Brown added that any approvals by the Plan Commission are invalid after one year of inaction. Planner Censky pointed out that is why the stipulation was added that the approval would only be effective upon the extension of service. Commissioner Brown advised that he would not approve the preliminary plat anyway because he thought that 54 lots were too many on 48 acres and believes 52 were still too many. Council Member Beck and Commissioner Kaiman concurred.

Mayor Myers noted that the 90-day approval timeline had begun and the Plan Commission would need to take action or the preliminary plat would be deemed approved after that 90-day period.

**Action:**

A motion was made by Commissioner Kaiman to reject the plat, which was seconded by Commissioner Brown.

Planner Censky suggested that the rejection of the plat be based on the fact that sewers were not available at this point in time. Commissioner Brown interjected that it should also be based on the density. Planner Censky noted that the density complies with the Land Use Plan established for the area. Mayor Myers agreed that the denial could not be based on density because the density is in compliance with the approved Land Use Plan.

Commissioner Kaiman stated that he would base his decision on the availability of sewer. Mayor Myers agreed that the sewer issue was a valid reason for denial because there is no sewer and water available.

**Continued Discussion:**

Commissioner Brown questioned whether the City had control over the density since the subdivision was proposed as a PUD development. Mayor Myers responded that the City does, within the Land Use Plan that is in place. The Planned Unit Development (PUD) simply takes the building sites and puts them together to create green space around them. The developer is still entitled to the number of houses per acres.

City Attorney Vance asked if the rezoning would be acted upon as well. Planner Censky noted that the preliminary plat and the zoning are tied together. City Attorney Vance advised that the rezoning controls the density.

**Continued Action:**

Commissioner Kaiman stated that his motion was to reject the preliminary plat approval and rezoning recommendation. Commissioner Brown seconded the motion. The motion carried without a negative vote.

**EXTRATERRITORIAL PLAT APPROVAL TO SPLIT AN 81,834 SQUARE FOOT PARCEL LOCATED IN THE TOWN OF CEDARBURG AT 9119 EDGE O'WOODS DRIVE INTO TWO SEPARATE PARCELS – JAMES RAINER**

Planner Censky advised that Mr. Rainer was requesting land division approval of a parent parcel consisting of 1.879 acres (81,834 square feet) to two separate parcels of 41,718 square feet and 40,116 square feet. He noted that the parcel was located outside of the City's sewer service area and is not planned to be served by future public sanitary sewers. The parcels would be served by private onsite soil absorption systems and wells.

Planner Censky noted that the proposed Certified Survey Map (CSM) received approval of the Town Plan Board in March. Since this request is for lands located outside of the City's Sanitary Sewer Service Area, he did not believe the City had a reason for denial.

**Action:**

A motion was made by Vice Chairperson Burgoyne, seconded by Commissioner Emmerich, to approve the proposed CSM to create two lots as approved by the Town of Cedarburg for the 81,834 square foot parcel of land located at 9119 Edge O'Woods Drive. The motion carried without a negative vote.

**CONSIDER APPROVAL OF A PROPOSED CERTIFIED SURVEY MAP (CSM) FOR ROAD RIGHT-OF-WAY DEDICATION OF A 7.18-ACRE PARCEL OF LAND LOCATED AT 461 HORNS CORNERS ROAD – LESTER BARTEL**

Planner Censky reported that the purpose of the proposed CSM was to dedicate the ultimate right-of-way along Horns Corners Road and not to subdivide the parcel. The Town requires the right-of-way to provide appropriate access to the adjacent Greystone Subdivision that will be coming forth for City review in a month or so. Since no new parcel was being created, he found no reason to object.

**Action:**

Commissioner Brown moved to approve the proposed CSM to dedicate road right-of-way on the 7.18-acre land parcel located at 461 Horns Corners Road. The motion was seconded by Vice Chairperson Burgoyne and carried without a negative vote.

**PLAN COMMISSION REVIEW AND POSSIBLE RECOMMENDATION TO ADD COMMUNITY-BASED RESIDENTIAL FACILITIES (CBRFs), ASSISTED LIVING, AND HOUSING AS CONDITIONAL USES IN THE I-1 INSTITUTIONAL AND PUBLIC SERVICE DISTRICT**

City Planner Censky suggested that "Housing for the Elderly" should be technically changed to "Senior Housing" to comply with State definitions.

Planner Censky explained that Lasata Care Center provides senior housing and assisted living as part of their continuum of care and the purpose of the proposed changes to the I-1 Institutional and Public Service District would be to legitimize those existing uses. The changes would result in the introduction of Community Based Residential Facilities, Assisted Living, and Senior Housing as conditional uses within the I-1 District. Those components of the Lasata complex are classified as non-conforming and this change would automatically render them as conditional uses. Any change in the existing operation or site would be subject to the conditional use procedures.

**Action:**

A motion was made by Council Member Beck, seconded by Commissioner Brown, to recommend adding Community-Based Residential Facilities (CBRFs) which have a capacity for nine or more persons, Assisted Living, and Senior Housing as conditional uses in the I-1 Institutional and Public Service District. The motion carried without a negative vote.

**REVIEW AND POSSIBLY RECOMMEND 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 reminded Commissioners that they directed that the proposed changes to the B-2 Community Business District and the I-1 Institutional District be scheduled separately for action and that the discussion pertaining to changes to the B-3 Central Business District be put on hold indefinitely. The B-2 Community Business District was to be reviewed to identify changes that are necessary in order to provide better control over the more intensive uses of that District. Of concern was the fact that the Code currently allows certain uses by right that, without proper oversight, could be impacting on the neighborhood. This was an important issue of concern for the neighbors to the recently approved Ollman multi-tenant project (former Clark Station).

Planner Censky reported that he appropriately categorized certain uses that had inadvertently been listed as both permitted by right and as conditional uses in the same district. Also, certain uses were changed from being listed as permitted by right to being listed as conditional and other existing

uses were simply added to the list. The more intense uses such as restaurants, taverns, entertainment facilities, etc. have been listed as conditional uses and those with less impact remain as uses by right. If the text changes are recommended for approval, a public hearing will be scheduled before the Common Council before final action.

Vice Chairperson Burgoyne asked how "clinics" were defined versus "medical offices" and why the distinction was being proposed. Planner Censky advised that he considered "clinics" a much larger complex. Commissioners discussed possible criteria to differentiate between the two and whether medical offices should also be listed as a conditional use. City Attorney Vance cautioned against using square footage to delineate the difference because numbers are not used anywhere else. Planner Censky would check other municipal codes to see if he could find a definition. Commissioner Brown suggested adding electronic stores and repair businesses to permitted uses by right, and eliminating gun stores completely.

City Attorney Vance believed that the phrase "subject to approval of the Police Department" added to the gun shops conditional use would not be enforceable. Planner Censky intended the language would allow for background checks before Plan Commission action. Mayor Myers suggested that background checks be part of the conditional use grant. City Attorney Vance added that if gun shops were not listed in any part of the Code, no gun shops could operate in the City.

Commissioner Kaiman absolutely opposed a prohibition of gun shops in the City. He also pointed out that auto repair and car wash was listed both as permitted and conditional uses.

Commissioner Emmerich asked for clarification on limited manufacturing that was incidental to a retail use. Planner Censky advised that the use was added to the Code with Ord. 92-22, which indicated to him that it covered a use existing at that time. Commissioner Brown suggested that it would cover a business such as a candle shop that made its own candles.

Commissioner Emmerich also asked what "essential services" were. Planner Censky read the Zoning Code definition that essential services were services provided by public or private utilities necessary for the exercise of the principal use, which include service underground, service and overhead gas, electrical, steam, water, sanitary, etc. City Attorney Vance suggested that public utilities do not need to be listed to be allowed in any zoning district.

Commissioners asked that their comments be incorporated and the changes return to further deliberation at a future meeting. Planner Censky asked that the Commissioners call him with any other comments or questions regarding the reclassifications.

### **REVIEW AND CERTIFIED CODE OF ETHICS; AND ACTION THEREON**

Mayor Myers referred to the Code of Ethics provided to all Commissioners from the City Clerk's office, with a request to certify their review of the document.

Commissioner Brown wondered if there would have been a conflict of interest if he had commented on the proposal to establish a new bed and breakfast because he owns one in the City. City Attorney Vance answered that if a Commissioner was a member of a small group that has a personal or financial interest in what action or non-action occurs, there would be a conflict. If the class of entities affected is small enough that the Commissioner's action could be viewed as benefiting his/her business, then it is a conflict of interest. If a Commissioner owned the only coffee shop and could vote on whether to allow another coffee shop, the class of entities might be small enough to be a conflict of interest. If a Commissioner is a landlord of a retail sales business in downtown Cedarburg, it would not be a conflict of interest because the class of entities is large.

City Attorney Vance continued that even if the Commissioner had any comments to make on the proposal, that Commissioner should recuse himself/herself from the discussion, join the audience and make comments as a member of the public.

City Attorney Vance noted that it is not required that the Commissioner disclose what the conflict may be. Commissioner Kaiman believed the Commissioner and the Plan Commission would establish better footing if the perceived conflict was disclosed. Vice Chairperson Burgoyne agreed because it would be recorded in the minutes and no one can be accused of holding back information at a later date.

City Attorney Vance advised that if the municipal attorney judges that no conflict exists, the Commissioner would be protected from individual liability.

**Action:**

Commissioner Brown moved to certify review of the Ethics Code and compliance thereof. The motion was seconded by Commissioner Kaiman and carried without a negative vote.

**ESTABLISH MEETING DATE FOR JULY OF 2006**

Mayor Meyers pointed out that the regular meeting date in July falls on the same holiday week as the Fourth of July. Both the following Mondays in July were available due to the cancellation of the Common Council regular meeting date of July 10.

Commissioner Brown advised that he would be unable to attend either meeting on the 10th or the 17th of July. Commissioner Kaiman noted he would be unable to attend a July 17th meeting. Commissioner Emmerich expressed his preference for the 10th of July. Vice Chairperson Burgoyne expressed preference for Monday, July 17, but could attend if the meeting were scheduled for the 10th.

Commissioners agreed to schedule the next Plan Commission meeting for July 10, 2006. It was noted that Commissioner Emmerich would serve as the alternate on the JETZCO with the absence of Commissioner Brown.

**MAYOR'S ANNOUNCEMENTS**

**JETZCO**

Mayor Myers advised that the JETZCO meeting was deferred to the July Plan Commission meeting at the request of the Town of Cedarburg because their JETZCO members were not available.

**Assessor's Printout**

Commissioner Brown suggested that to save paper, a printout provided through the City Assessor's program was not necessary.

**Beer Garden License Action**

Commissioner Brown commented that the newspaper misrepresented the Plan Commission as accepting the wine bar outside garden for Ernie's Wine Bar on Portland Road, instead of simply reviewing the fence.

Mayor Myers expressed his dislike for the beer garden license ordinance and believed the entire ordinance should be reviewed and revised. Planner Censky noted that it was written as a licensed

provision and many other codes classify outdoor beer gardens as conditional uses within certain districts. Mayor Myers noted that he believed the Common Council should be involved in the approvals of beer garden license requests.

Planner Censky was directed to provide alternatives to the next Plan Commission meeting.

### **ELECTION OF VICE CHAIRPERSON AND SECRETARY**

#### Election of Vice Chairperson

Commissioner Brown nominated Mark Burgoyne as Vice Chairperson. A motion was made by Commissioner Brown, seconded by Commissioner Kaiman, to close the nominations. The motion to close nominations carried without a negative vote.

Commissioner Burgoyne was unanimously elected as Vice Chairperson of the Plan Commission.

#### Election of Secretary

Commissioner Brown nominated Council Member Sandra Beck as secretary of the Plan Commission. Commissioner Brown moved to close the nominations. The motion was seconded by Commissioner Kaiman and carried without a negative vote.

Council Member Beck was unanimously elected as Secretary to the Plan Commission.

### **ADJOURNMENT**

Commissioner Schara moved to adjourn the meeting at 9:15 p.m. The motion was seconded by Council Member Beck and carried without a negative vote.

Darla Drumel,  
Administrative Secretary