

FROM GOOD TO GREAT

Cherokee Special Area Plan:

**Friends of Cherokee Marsh and Upper Yahara Watershed
Madison Common Council Hearing -- Tuesday January 16, 2007**

CONTENTS

ENVIRONMENTAL CONSIDERATIONS

LAND USE CONSIDERATIONS

BENEFITS OF THE FRIENDS' PLAN

PROCESS CONSIDERATIONS

ENVIRONMENTAL CONSIDERATIONS

Cherokee Marsh is a vital player in the ecology of all Dane County*. For this reason, the neglect of City of Madison Planners to conduct a comprehensive environmental review of the potential effects of the proposed Cherokee Park, Inc. developments on Cherokee Marsh remains a serious failure in the planning process.

The Friends of Cherokee Marsh would like to go on record tonight pointing out some important deficiencies in the review process for this environmentally significant proposed development.

Hydrologic Budget

The significance of Cherokee Marsh justifies the incorporation of a comprehensive hydrologic budget, including surface and groundwater factors, in the review process. According to Dane County staff¹, a hydrologic budget was conducted to investigate surface and groundwater implications relating to development at Token Creek and should have been performed for Cherokee Marsh.

To investigate implications of development in the Pheasant Branch Conservancy area, the United States Geological Survey² conducted a published three-year comprehensive surface and groundwater study for the City of Middleton. Although Cherokee Marsh has equal or greater significance to the Yahara Watershed than either the Token Creek or Pheasant Branch areas, similar hydrologic budget studies were not conducted for Cherokee Marsh.

Infrastructure Implications

Municipal well #13

Increased population in the area of Cherokee Marsh would increase water demand on Municipal Well #13 located on Wheeler Road. The Madison Water Utility has investigated and confirmed that sufficient water would be available to meet the projected water needs of the new population. However, effects on the springs, fens, and water table of Cherokee Marsh due to increased groundwater drawdown at the well have not been investigated. Furthermore, monitoring wells necessary to monitor watertable-drawdown levels and deleterious effects of additional pumping have not been incorporated into development plans.

A preliminary review by Montgomery & Assoc. suggests that increased groundwater pumping would result in reduced groundwater discharge to the Yahara River. Thus, the contribution of clean, cold groundwater to the Yahara Watershed would be reduced as well.

Investigations in other states, and preliminary investigations in Madison, suggest that high organic matter regions such as those beneath leaking landfills or wetlands can create conditions favorable to the release of manganese from bedrock formations. Excess manganese has been documented in the nearby Town of Burke well. Should water from the shallow Municipal Well #13 become unusable, City of Madison taxpayers would bear the cost of locating a new municipal well.

Stormwater Detention Basins

Proximity to Cherokee Marsh makes the location and performance of stormwater detention basins necessary to serve new development areas especially significant. Wisconsin Wetlands Association and Madison Audubon Society have indicated their concerns over adequate protection of the marsh, and recommend that 75 foot buffer zones planted with native vegetation be located between the marsh and any stormwater detention basins.

Specific plans for these basins, including distance to the wetland boundaries and width of buffer areas have not been available for general review. The location of a MMSD sewer line near the border of the marsh (Subarea 1) suggests possible difficulties in providing sufficient buffer areas for detention basins at that location.

The wetland ecologist with the most knowledge of Cherokee Marsh³, has pointed out the failure of recently constructed detention basins in protecting nearby wetland vegetation in the Madison area. Recent comments by the City of Madison engineering department⁴ suggest new recognition of the importance of biology in the management of stormwater runoff.

Closed Landfills

DNR files indicate the presence of two landfills near, or in, Subarea 1: a closed licensed municipal landfill owned and operated by the Village of Maple Bluff, and a closed demolition waste landfill used by the Findorff Corporation. Proposed development in Subarea 1 would be located west and south of the Village of Maple Bluff landfill, but the location of the closed Findorff demolition landfill has not been established.

Maple Bluff originally operated the landfill by the trench-fill method and when it closed in 1992, no monitoring wells or gas probes were installed. Encroachment of development near other landfills in Dane County has resulted in documented gas migration along subsurface channels near or into homes and basements⁵.

The Findorff demolition waste landfill may pose settlement problems to residences, roads or other infrastructure, as the borders of the demolition waste have not been determined.

These issues raise the potential of additional cost to taxpayers in to order to locate new development in these areas.

Wildlife Ecology

Reduction of Upland

Madison Audubon Society (MAS) has indicated that significant acreage of upland is necessary to the ecological functioning of any wetland. City staff have documented that the upland/wetland ratio remaining after the CPI development would be 0.5/1. According to MAS, this ratio is far too small to support a functioning wetland ecosystem.

The City has responded that these ratios have only been established for waterfowl production in prairie pothole regions, but MAS reports that this is inaccurate. The Conservation Reserve Program, Wetland Reserve Program and other governmental agencies and wildlife groups support higher upland ratios for all aspects of wetland ecosystem function.

The value of upland, particularly in Subarea 1, has been documented⁶, but no environmental investigations have been conducted to determine the effects on Cherokee Marsh ecology if adjacent upland is reduced.

Ecopassages

The Friends of Cherokee Marsh support the incorporation of ecopassages above and/or below roadways in the Cherokee Marsh area. Such passages would facilitate movement by people as well as wildlife across threatening roadways, and would confirm statements by CPI early in the planning process that their development would be ecologically friendly.

*Cherokee Marsh is strategically located to serve many important wetland functions in the Yahara Watershed. The marsh improves water quality in the Yahara River and its associated lakes by discharging large volumes of cold, clean groundwater into them. At the same time, the marsh acts as a filter capturing some of the runoff from upstream agricultural and construction sites in Dane County, thereby reducing sediment loads, nutrients and pollutants that enter the lakes. In times of high precipitation, the marsh acts as a sponge, tempering high flood surges before they enter the lakes.

¹ Kevin Connors, Dane County

² Dr. Randy J. Hunt, USGS, Madison

³ Dr. Quentin Carpenter, UW-Madison

⁴ Larry Nelson, P.E, City of Madison

⁵ Janet Battista, P.G., retired DNR Waste Management Program Hydrogeologist

⁶ Dr. Joe E. Meisel, Zoology Department, UW-Madison

LAND USE CONSIDERATIONS

The Friends have from the beginning consistently supported the land protection achieved by the easements or purchases summarized in the draft Cherokee Memorandum of Understanding (MOU) and draft Annexation Agreement/Attachment (AA/A).

The draft Cherokee Special Area Plan (SAP) was also a good document with many excellent features. We are also encouraged by recent Planning staff reports to the Plan Commission staff that indicate there will be many areas of agreement between the City and the Friends as we work to make this a great development for our city.

The Friends however continue to believe that our proposal offers significant land-use enhancements to the SAP, most importantly by saving at least 100 acres of additional open space for restoration toward inclusion in the City's conservation park. The Friends' main land use proposal better protects the marsh's wetland ecology while also providing uplands habitat crucial for marsh wildlife.

Setting the Record Straight

Here are some frequently asked questions about the Friends' plan:

Is the land use portion of the Friends' proposal "10 miles away" from the City's SAP?

Is it "radical" or "impractical" or even just "unclear"?

Will it result in a development pattern that is incompatible with nearby existing residential neighborhoods?

Will it require the planning process for the Special Area Plan to start over, along with negotiations on the acquisition of open space lands (the memorandum of understanding) and the annexation agreement?

Does it require the City to exercise its use power of condemnation (eminent domain)?

The answer to all of the above questions, drawn from actual and mostly public City staff remarks or reports, is "No."

The Friends' proposal is simply a modification of the City's SAP that uses increased density in portions of one or two subareas to protect two other subareas north of Wheeler Road with far more ecological value.

The Friends' proposed land use also allows retaining all of the features promised to, and still desired by at least some members of the Whitetail Ridge Neighborhood Association: a six-acre northward addition to an existing neighborhood park, about two acres for planting of a visual buffer between the new and existing houses, and 1-3 acres of lower density (6 DUs/acre) development just northeast of Whitetail.

Additionally, as much as 100% of a 20-acre woodland that probably has been a woodlot since European settlement would be protected, for ecological purposes and use as a park. This woodland would also buffer existing CPI-constructed condos to the west from the new CPI development.

The Friends' proposal confirms the developer's right to build all the DUs agreed to in the City's SAP or to receive market-based compensation for any shortfall that may ensue should neighbors oppose some of the increased density. The land use proposed by the Friends would allow the developer to make as much or more profit, likely with less overhead and certainly with less risk.

Steve Hiniker, executive director of *1000 Friends of Wisconsin*, and an expert in land use issues, wrote (email, 8 January 2007) this after reviewing the Friends' proposal:

I think that a higher level of density than what is currently proposed [by the SAP] would benefit all parties. More of precious area of Cherokee Marsh would be spared development. Properly designed, higher density can help bring about a greater sense of community and make the area a more attractive community to live in. Obviously, the developer can gain by having less land to develop with a higher quality product in the end. The notion of higher density development is crucial to the future of Madison - we will either grow up or we will grow out - destroying the very resources that make us the attractive area we call home.

You have done your homework on alternatives. I hope that full consideration is given to your proposal.

Density

The Friends' proposal would require somewhat higher density than called for in the City's recent Comprehensive Plan, but only on about 5-10 acres. These acres are well-situated from a planning perspective, near the intersection of a main neighborhood road and an arterial road. The City's SAP calls for additional density in this area.

The Friends land use proposal can be realized with dozens of scenarios but none of these require these 5-10 acres of increased density area to exceed the level termed "Medium Density" in the City's Comprehensive Plan or 35-40 DUS/acre. Just as in the City's SAP, all the other acres would be "Low Density" with most acreage in the 8-15 DUs/acre subcategory, and 1-3 acres in the <8DUS/acre category.

Water & the Density Debate

At Plan Commission meetings, the developer's consultants have claimed that the lower densities called for in SAP would be better for ground water infiltration and storm water. This is an outdated idea, contradicted by recent research that was provided to the Plan Commission earlier this month.

Notably, we found that the higher density scenarios generated less stormwater runoff per house at all scales and time periods. We found that:

- With more dense development (eight houses per acre), runoff rates per house decrease by about 74 percent from one house per acre.

- For the same number of houses, denser development produces less runoff and less impervious cover than low-density development.
- For a given amount of growth, lower density development covers more of the watershed.

Taken together, these findings indicate that low-density development is often not the best strategy for reducing stormwater runoff. In addition, the findings indicate that higher densities may better protect water quality, especially at the lot and watershed levels. Higher density developments consume less land while accommodating the same number of houses as lower density developments. Consuming less land means less impervious cover is created.

Lynn Richards
Senior Policy Analyst
U.S. Environmental Protection Agency
Planning, JUNE 2006, p30

See www.epa.gov/smartgrowth for relevant reports.

Three EPA reports are: *Protecting Water Resources with Higher Density Development*, *Using Smart Growth Techniques as Stormwater Best Management Practices*, and *Protecting Water Resources with Smart Growth*.

Parks & Open Space

City Planning Staff's January 8 report states that its SAP will "preserve the highest priority open space lands."

The 100 acres north of Wheeler Road that the Friends propose to protect are adjacent to a Dane County Designated Natural Resource Area, and thus considered of such high priority that they are automatically eligible for the county's conservation funds.

South of Wheeler Road, Hornung Woods was targeted for park or open space in the City's Planning Department's own Northport/Warner Park Neighborhood Plan (1992), the most recent neighborhood plan for this area. That park was a priority for the Northside residents who helped shape that plan. Current residents were not informed of this important history during the City's recent Comprehensive Planning process. Development is slated for much of Hornung Woods in the City's SAP.

Several key environmental experts, as well as representatives of environmental or conservation groups, all have written to the City in recent weeks, that both the 100 acres and the Hornung Woods acres, either because of their ecological importance or capacity to protect the marsh's ecology from groundwater runoff, are also deemed by them to have "high priority".

So, while the SAP does protect "high priority" open space lands, the Friends proposal protects 100-140 more such acres.

Neighbors

The Friends presented their proposed land use in a general map format, as database tables, and in numerical tabular scenarios with supporting images of density levels.

With additional time, even just 45-60 days, the Friends could have prepared a more user-friendly visual presentation of our land use proposal, especially the density, for use in meetings with neighbors.

[To allow this, the Council could tonight refer the SAP back to the Urban Design Commission, for 45-60 days.]

If the Friends' proposed density for Subarea 2 proves unacceptably high to neighbors, the 24 DUs slated in the SAP for Subarea 4 (Wheeler/Comanche Way Triangle) and up to 66 DUs from Subarea 1 could instead be reallocated to Subarea 3 (Cherokee County Club).

Subarea 3 is a 6-acre area currently dominated by a large paved surface parking lot that could be overbuilt, with retail and DUs having greenroofs, adding density while enhancing stormwater management.

In the SAP, Subarea 3 is slated for only 24 DUs, or 4 DUs/acre. Adding 90 DUs from Subarea 4 and 1 would increase density in Subarea 3 to only 15 DUs/acre, within the City's upper Low Density designation (8-15 DUs/acre).

Acquisition/Funding

It is not certain how much if any compensation would be due the developer if the Friends proposal were accepted. Given that the same number of DUs would be built, and that there would be considerable cost savings possible from the higher density, as well as reduced risk, the profit differential between the SAP and the Friends proposal likely would be small.

Additionally, if any compensation would be necessary, its early delivery to the developer (at least relative to the 30-year build out that is being proposed with the SAP), would allow broad investment, helping the developer avoid the risk of the real estate marketplace.

The Friends began to research funding sources and established that most of the lands that it sought to protect were eligible for Dane County Conservation Funds.

In meetings and communications with county staff, it soon became clear that the county was interested in an application to the Conservation Fund for the 100+ acres the Friends wished to protect.

The Friends feel that the easiest and least costly way to apply would be to add these acres into the application for the MOU acreage for which the City is planning to apply to the Conservation Fund. Addition of the acreage in the Friends proposal would enhance the City's application by adding elements that gain points in the Funds application rating system: additional upland, view shed protection, and other factors.

The entire package would then likely be eligible for increased Stewardship Funds, through the DNR.

The Friends could also apply separately from the City, as well as later, to avoid competing with the City for somewhat limited funds. Jim Welsh, executive director for the *Natural Heritage Land Trust* has written (4 JAN 2007):

The Natural Heritage Land Trust, a non-profit conservation organization, has already been in discussions with the City of Madison and hopes to partner with the City to obtain government funds not available to the City for the purchase of land and conservation easements the City hopes to make at Cherokee Marsh.

The Land Trust may be willing to work with the *Friends of Cherokee Marsh & Upper Yahara Watershed* in a similar fashion but has not made any commitment to do so, pending provision of additional information. The Land Trust seeks strong community consensus from local units of government and residents before assisting with such projects.

Given time, and a willing municipality and seller, the Friends could also raise private or foundation funds. With significant City, County, and State funds available as matching funds for grant applications, the necessary effort is not daunting.

[To allow exploration of this approach, the Council could refer this matter back to Parks Commission for 45-60 days.]

Willing Seller

Throughout most of 2006, the developer told the public and individuals on several occasions that "everything is for sale." When the City asked for the Friends endorsement of the early version of the draft MOU, we gave our endorsement believing that we would have the opportunity to purchase land from the developer outright or through application to funders.

We asked the City negotiators to include in the final language the Option-To-Purchase (First-Right-of-Refusal) for the Friends or their proxy. Months later, when the draft MOU was about to be made public, we met with City staff and learned that the Option-To-Purchase had not been proposed.

[The Council could tonight amend the MOU, AA/A and MOU to include this provision.]

After the draft MOU was announced publicly, the Friends were free of their confidentiality pledge and immediately arranged for a meeting with Whitetail Ridge

Neighborhood Association to introduce the higher density aspects and other elements of the Friends' land use proposal.

As soon as possible thereafter, the Friends asked the lawyer for the developer to meet with them on Saturday, November 18th. We discussed our proposal and made it clear that we would work to provide any required differential compensation to the developer. While skeptical, he did not close the door.

On that basis, on Monday November 20th we presented our proposal to the Plan Commission, and asked for time to check on funding sources, including the County.

Negotiations

The Friends proposal need not endanger the City's draft agreements with the developer regarding purchase or annexation, unless one of the parties wants it to do so.

Because the Friends proposal is a relatively modest modification of the SAP, there is little left to negotiate. A willing seller and municipality could arrive at terms in short order.

Adoption of the Friends proposals could rather easily be accomplished by amending the SAP, and relevant sections of the MOU and AA/A.

Even if the Council passes the MOU, AA/A, and SAP tonight, the various draft Cherokee documents can be amended later.

BENEFITS OF THE FRIENDS' PLAN

The Friends' proposal for the Cherokee Special Area Plan offers many benefits to the ecology of the marsh and watershed, the developer, the City, and the neighborhoods. The Friends' proposal will:

- **preserve 100 acres of upland areas adjacent to the Cherokee Marsh Natural Resource Area, allowing restoration as biologically important uplands for marsh wildlife with modest effort (including volunteer support pledged by the *Friends*)**
- **better protect the marsh's deep peat marsh, fens, and other natural features from stormwater runoff by situating development at a more suitable distance from the marsh's**
- **lower the chance of stormwater runoff entering the Yahara River (including the marsh) or Starkweather Creek watersheds by creating a large natural infiltration area while markedly reducing impervious surface area (up to 50% or 14 acres)**
- **preserve all or most of an existing 20-acre woodland and enhance its function as an ecological corridor**
- **better preserve the viewshed across both the eastern and western portions of the marsh, north from Wheeler Road**
- **by reducing lawn area, diminish demands on municipal well water and potential related negative effects on groundwater supply to the marsh**
- **enhance profit for the developer, by reducing risk, infrastructure costs, and overhead**
- **create higher property value for owners of new construction**
- **creates up to 20% higher property value, for owners of existing homes in Whitetail Ridge**
- **reduce City infrastructure expenses**
- **reduce chances of flood-related resident and municipality/county government expenses**
- **create more open space, bringing long-term health benefits through provision of recreational and respite opportunities**
- **enhance health by providing natural airborne pollution control by increasing woodlands and natural areas**
- **preserve existing viewsheds across the marsh, an aesthetic asset of inestimable value to the City for centuries to come.**

PROCESS CONSIDERATIONS

During the planning process for the proposed development adjacent to Cherokee Marsh, the Friends of Cherokee Marsh have done our best to serve as a voice for the marsh and watershed. Some of our concerns were heard and acted on, and we thank those involved for listening.

We also experienced frustration in working with the City, which encouraged citizen input but only late in the process. The Friends had little time to react and at that point there was little motivation for the City to change a detailed plan that was the result of much effort.

The following is a history of the process from our perspective. Delaying approval of the Cherokee Special Area Plan by 45 to 60 days would allow time for the Friends to exchange information with the City, the developer, and neighborhoods. The result could be a development plan that is better for everyone.

Hints of new development on Cherokee Park Inc. (CPI) land were circulated as early as 2002 to the current residents of Cherokee Park, of whom many were unhappy about it.

According to the information shared at the first public meeting at Warner Park Community Recreation Center (WPCRC) in December of 2005, the developer had been working on a plan for two years with Schreiber Anderson & Associates, and later for a year with City of Madison staff, because the property would eventually be annexed to the City from the Townships of Burke and Westport.

The developer's planning team laid out building plans to take place over the course of 30 years. He also stated that the major reason for this development was to promote the Country Club as a viable business for the residents of Cherokee and for all of the Northside. City planning staff was in favor of the development's draft Special Area Plan (SAP), which they had developed in response to an initial plan put forth by the developer's team.

The audience at this meeting voiced many concerns starting with increased traffic on roads already at high capacity. They expressed doubts about storm water management being sufficient to truly protect the marsh and the lake. They were worried about access to neighborhood parks as well as the available school districts for families with children (some of the property to be developed currently is not in the MMSD School District). Most of the citizens present at this meeting were unhappy with the new development plans. Many expressed doubt that new homes and condos would motivate a resurgence of interest in the country club.

Subsequent public input opportunities were largely due not to elected officials representing the people living near the proposed development, but to the

Northside Planning Council's effective effort to involve residents in a more public and democratic process.

Also held at the WPCRC, the next meeting was attended by over 100 people. This time the City took the lead laying out the plans for mostly Northside residents, vigorously advocating for the Cherokee development as "good" and also compatible with the City's Comprehensive Plan (CP).

Once again the citizens in attendance overwhelmingly opposed the plan, primarily because they wanted to protect the environment, specifically Cherokee Marsh, the Yahara River, and the waters of Lake Mendota, as well as the City's groundwater. City staff was not able to assuage uneasy feelings about possible damage to the environment.

It was after this meeting that community leaders brought together other interested citizens to found the *Friends of Cherokee Marsh & Upper Yahara Watershed* hoping this organization could have a voice in protecting the critical ecosystem of the marsh. On June 27th, several members gave testimony to the Plan Commission that addressed some of the key environmental issues on this CPI project. Members of the commission had questions as well. The Plan Department later released a document with responses to the questions.

Then good news came from the mayor's office! At the Friends request, the City had begun negotiations with CPI to purchase the 5th Addition, the area that Friends and others thought was the most ecologically important. After weeks of talks, a draft Memorandum of Understanding (MOU) was reached which gave the City the right to purchase a large portion of the Fifth Addition while also protecting over 200 acres of wetlands located east of North Sherman Avenue. The Friends' were very quiet during this sensitive time so City staff could negotiate in good faith with CPI.

After more research and investigation, consultation with the proper experts including City and county staff, the Friends offered an alternative proposal for development at Cherokee, preserving even more land by increasing density in one or two subareas that could well handle it. These two subareas, both of them close to marshland while also providing the ecologically necessary uplands, would remain open space and be restored to natural conditions for inclusion in the City's conservation park.

By this time, the approval of the Cherokee draft SAP, MOU and Annexation Agreement, all bound to each other (we were constantly reminded), were on the fast track. The Friends did not have enough time to finalize their plan prior to the first meeting of the Plan Commission in early December, and only were able to present an overview. Our plan hardly got a fair hearing from some City officials.

The City is relying on the County for partial funding of the land to be bought, the County has been all but ignored in the proceedings.

What's wrong with this picture? The Friends have high praise for the City's willingness to hammer out an agreement with CPI. However, going back to the very first meetings, it was clear that Northside citizens wanted this development severely curbed if not stopped altogether. Once the Friends group got organized, we did more study and research, some of which called into question information provided by the City staff and City officials, yet were all but ignored or, worse, The Friends' proposal was labeled "impractical" or "radical."

The health of the marsh has enormous impact on the cleanliness of our lakes. Open space and eco-corridors enhance the quality of life of all residents, both those who live close by and those who come to this area to experience the wonders of a natural resources area and conservation park.