

# MINUTES

## Capital Area Regional Planning Commission

April 8, 2010

City-County Building Rm 315, 210 MLK Jr Blvd, Madison WI

7:00 p.m.

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Present: Curt Brink, John Imes, Peter McKeever, Jeff Miller, Ed Minihan, Larry Palm, Susan Studz, Caryl Terrell (by telephone), Phil Van Kampen

Absent: Zach Brandon, Martha Gibson, John Murray

Staff Present: Chris Gjestson, David Greene, Mike Kakuska, Kamran Mesbah

### 1. Roll Call

Chair Van Kampen called the meeting to order at 7:08 p.m.; roll was recorded. Ms. Terrell attended by telephone.

### 2. Approval of minutes of the March 11, 2010 meeting

Moved by Mr. Miller, seconded by Mr. Sonnentag, to approve the minutes of the March 11, 2010 meeting. Motion to approve carried unanimously.

### 3. Review of agenda

Ms. Terrell requested that the staff stormwater runoff presentation as part of Item #14 be presented in conjunction with Item #6. Mr. Van Kampen stated that without objection, the request would be granted by unanimous consent; there were no objections.

### 4. Public comment for items not on the agenda

Arnold Harris, 3427 County Rd. P, Mt. Horeb, representing Western Dane Coalition for Smart Growth and Environment, requested that those who oppose USA amendment requests be given the same opportunity as applicant communities to make presentations. He described the importance of public participation, and stated that three minutes of public comment was not sufficient.

### 5. New business

None.

### 6. Discussion of recommendation from CARPC Environmental Resources Technical Advisory Committee (ERTAC) regarding stormwater runoff volume control

Mr. Rupiper made a PowerPoint presentation on stormwater runoff volume and different standards for control. He described the ERTAC membership, which is a cross-section of public-private experts appointed by CARPC, and its participation over four meetings. Ms. Studz asked about those members who did not attend meetings; Mr. Rupiper stated that absences were due to scheduling conflicts or personal decisions, although all members were provided meeting materials including minutes. Ms. Studz asked if there were any gaps in the final recommendations created by the absences; Mr. Rupiper answered none were expressed. Mr. McKeever expressed disappointment that biological aspects were missing from the process. Mr. Mesbah noted that the biological aspects were the basis for referring the issue to the TAC and are well covered by research papers that have been published in recent years and months. These biological findings were presented to the TAC and were accepted. Therefore the biological aspects of hydrologic change were not at issue, the practicability of different control measures and standards was. Current

research and activities by USGS and WDNR would indicate that we may be just a few years from being able to model the streams in the region to predict the biotic susceptibility of each stream reach to varying changes (increase and decrease) in flow volumes. Until these efforts bear fruit, we are unable to predict the impact of such changes on the biological health of a stream. Mr. Rupiper continued the presentation.

Mr. Kakuska made a presentation on the natural resources aspect of FUDA planning; he answered questions posed by commissioners.

Moved by Ms. Terrell, seconded by Mr. McKeever, to direct staff to schedule a public hearing to consider the adoption of the TAC recommendations. Motion carried unanimously on voice vote.

**7. Consideration of Resolution CARPC No. 2009-10 amending the *Dane County Land Use and Transportation Plan* and *Dane County Water Quality Plan* by revising the *Verona Urban Service Area boundary and Environmental Corridors in the City of Verona***

The following individuals registered in support of the proposal: Phil Salkin, 127 N. Main St., Verona, and Steve Gaffield, Montgomery Associates, 119 S. Main St., Cottage Grove, representing City of Verona. The following individual registered to speak in opposition to the proposal: Stefi Harris, 3427 County Rd. P, Mt. Horeb, representing Western Dane Coalition for Smart Growth and Environment. Mr. Van Kampen stated that the public hearing was previously held for this item; no public comments would be made. Mr. Palm noted that the agenda referenced persons wishing to speak on agenda items, not only public hearing items. Discussion followed. Moved by Mr. McKeever, seconded by Ms. Terrell, to allow public comment on the item; Mr. McKeever stated that CARPC should follow the language of the posted agenda. Mr. Miller expressed opposition since he had already spent hours during the day taking phone calls regarding the item, and the public hearing had already been conducted; discussion continued. Motion carried on voice vote. Ms. Harris stated that staff supported 100% volume control when the amendment was originally proposed in 2009, but now supported 90% control which did not provide adequate protection from stormwater impacts. She referred to a storm sewer map of the City; the basins were built in the '80's when lower standards were applied. Money was not available to retrofit the facilities to capture the state-required capture of 40% of total suspended sediments. She stated that the proposal was not good for water resources.

Moved by Mr. Miller, seconded by Mr. Sonnentag, to approve Resolution CARPC No. 2009-10 with the conditions and recommendations in the cover sheet for the agenda item. Mr. Miller stated that a large amount of data was available for this proposal, including that from a study costing the City \$90,000. He stated that the TAC, the CARPC-appointed body of experts, had recommended a stormwater standard to which the City had agreed. Commissioners discussed the proposal.

Ms. Terrell stated that the TAC report indicated that because some areas could not be practically controlled for 100% stay-on, it could not be required as a county-wide standard, although recent USA amendments included areas that would be protected by the 100% standard. She stated that based on the TAC conclusions, CARPC should defer action on the proposal until such time that TAC evaluates a study demonstrating volume control to 100% of pre-development volume can be met by construction BMPs. She stated that CARPC responsibility was to protect the water quality and quantity of a state exceptional resource water (under §281.15 Wis. Stats.) and designated cold water

communities of the Upper Sugar River and Badger Mill Creek (under NR 102) and associated wetlands. She urged denial of the proposal.

Mr. Miller asked staff if TAC addressed Ms. Terrell's concerns. Mr. Rupiper stated that the Commission should consider discussing the recommendations with TAC members directly. He stated that with 100% pre-development stay-on there would be no impact; 90% stay-on presents a gray area: current science does not provide a determination of degree of impact. The cumulative impacts would be greater than immediate impacts. Mr. Miller asked if the five-year evaluation period proposed by TAC would result in impacts on the receiving streams; Mr. Rupiper stated that given the amendment area was a small percentage of the total watershed, TAC likely determined that five years would not present significant cumulative impacts on the streams, but may provide enough time for results from more volume control studies which would better inform the proposed standard. Commissioners continued to question staff.

Mr. Miller asked if the applicant supported a watershed-wide study; Mayor Hochkammer answered yes, and referred to his letter to CARPC dated April 8, 2010 (at members' places). He stated that the City was imposing a stormwater utility fee effective July 1, which would provide funding for maintenance and retrofit of facilities. He described the consistent City commitment to the proposal.

Moved by Mr. Miller, seconded by Mr. Sonnentag, to amend the motion by adding a recommendation of approval for the City to engage municipalities upstream in the Upper Sugar River watershed as part of a CARPC-coordinated watershed assessment process, and by adding a condition of approval for the City to assume responsibility for stormwater facility failures should those facilities fail, and by adding a "whereas" clause to the Resolution which includes monitoring and adaptive management activities as part of implementation of the stormwater management plan. Discussion continued. Motion to amend carried unanimously on voice vote.

Ms. Terrell stated that there was risk with any approval in this area, which was very special. Even additional conditions of approval may not prevent a tipping point when sensitive cold-water communities become overwhelmed by the impacts of development. Anything less than a 100% stay-on standard was likely unacceptable in this area.

Moved by Mr. Van Kampen, seconded by Mr. Murray, to recommend that the City endeavor to engage in substantive talks with the Town of Verona to commence no later than June 1, 2010 with the goal of laying the groundwork for long-term cooperation between the City and Town of Verona. The target date to complete the foundation of this collaboration will be no later than January 1, 2011. CARPC staff and commissioners who may choose to do so will offer whatever assistance they can toward furthering this process.

Discussion continued. Mr. Miller asked if the TAC recommendation recognized that a 90% control standard would be sufficiently protective of the amendment area; Mr. Mesbah answered no, the recommendation spoke to attainability and practicability, not whether it was sufficiently protective, which would be investigated by the watershed-wide study. He stated that the Commission could deny a proposal based on water quality impacts if it can be confident that the proposal will cause damage; it is difficult to determine if 90% would cause damage. Discussion continued.

Ms. Terrell stated that much of the research referenced by TAC was on urban streams, and a smaller amount of research was on cold water streams. The research was much more hesitant on protection with BMPs of cold water streams than urban waters. If TAC had been asked to come up with a standard for cold water resources, it would likely recommend a higher standard; however, no meeting minutes were available to review. She expressed concern for relying on adaptive management processes to protect cold water resources. The research showed that water temperatures could be a factor in watersheds with cold water fisheries. The low impact development strategies, some of which were proposed in the amendment request, were largely controlled by ambient air temperatures, the runoff was statistically warmer in the low impact development basins compared to conventional basins, and the detention of runoff in the low impact basin allowed for solar heating. Mr. Mesbah stated that the minutes of the TAC meetings were posted on the CARPC website. He stated that the study referenced by Ms. Terrell was dated: what was considered "low impact" in that study was approximate to low impact development in 1980's; solar impacts referenced were not relevant to the kinds of volume control measures discussed by TAC. He stated that TAC members have extensive technical expertise, and know the elements of each study to which more weight should be given.

Mr. McKeever stated that while the motion to amend was well intentioned, the Town of Verona, or their comprehensive plan, did not appear to be sufficiently considered in the proposal. Ms. Studz stated that she had spoken with Manfred Enberg (Town Supervisor and Town Plan Commission member) regarding the Town perspective; it would be helpful if communication between the town and city stakeholders could be encouraged and improved. Mr. Minihan expressed preference to defer action on the resolution, he expressed support if the motion to amend provided a true commitment from the City towards cooperation with the Town. Discussion continued. Motion to amend carried unanimously on voice vote.

Mr. Imes stated that while the proposal was a good effort by the City, he was not comfortable with supporting it as proposed, due to the extraordinary resources of the amendment area. He expressed support for higher goals for protective measures, such as the 100% volume standard, especially for Area E, and support for deferral with hopes of modifications. Mr. Miller asked how DNR might view CARPC denial of the proposal; Mr. Mesbah stated that DNR would likely ask for evidence or analysis of damage that would be done by a 90% standard at this location. Discussion continued. Mr. Brink expressed support for the amendment; he stated that the proposal could set the standard for water quality protection on a national basis. TAC was an expert body which has proposed very high standards; higher standards could be applied in the future after they have been researched and tested, but the proposal should be based on current standards. Mr. McKeever stated that the percentage of stormwater volume stay-on was not the critical piece in his view; other concerns had not been addressed. USA amendments in this amendment area ought to reflect developments that are state-of-the-art with the highest standards. He described a hierarchy of regulation; the highest standards improve the current system. He stated the thermal impacts have not appeared to have been addressed. The quality of both streams in the area have been understated by staff and the Montgomery Study; Badger Mill Creek is currently an active fishery. He expressed concern for impacts of chloride increases due to street salt; he questioned the rationale for the location of the medical clinic in a highly visible, highly valuable area such as Area W. He stated that stream biotics have not been adequately addressed. (Mr. Minihan left the meeting.) Mr. McKeever suggested that a 90% volume control standard should be a minimum standard; certain areas in the county which were less sensitive could use the 90% standard. He disagreed with staff that denial of the proposal needs to be based on an

expected damage to the resource; even if it is unknown whether damage would occur, the resource was too valuable to gamble on. Discussion continued; staff responded to questions.

Motion as amended failed on roll call vote, 6 ayes and 3 nays (Imes, McKeever and Terrell voting no). Mr. Gjestson noted that under CARPC Bylaws the Resolution would automatically be re-considered at the May meeting (the number of votes in support plus the number of absentees equaled 8 or more). The meeting recessed for five minutes by unanimous consent without objection.

**8. Consideration of *Farmland Loss in Dane County* issue paper**

Recess concluded. Jon Becker, 4233 Kenwood St., Madison, expressed support for the transparent, public process used in preparing the paper; he suggested a public hearing be held on the report. He described the importance of the public process and input, and how it had improved previous processes. Mr. McKeever expressed support for a wide dissemination and public hearing for the paper. Mr. Mesbah stated that a public hearing may most appropriately be held after the completion of the entire series of papers. Moved by Mr. McKeever, seconded by Mr. Palm, to approve the publication of the issue paper. Motion to approve publication carried unanimously by voice vote.

**9. Consideration of Resolution CARPC No. 2010-5 expressing appreciation to Kristine Euclide for her service and contribution to the Capital Area Regional Planning Commission**

**10. Consideration of Resolution CARPC No. 2010-6 expressing appreciation to Steve Hiniker for his service and contribution to the Capital Area Regional Planning Commission**

Motion by Mr. Palm, seconded by Mr. Imes, to adopt Resolution CARPC Nos. 2010-5 and 2010-6. Motion carried unanimously on voice vote.

**11. Consideration of letter in response to the Wisconsin State Legislature solicitation of comments to provide input on the Groundwater Protection Act**

Motion by Ms. Terrell, seconded by Mr. McKeever, to table indefinitely. Ms. Terrell stated that the paper was not appropriate and missed the mark; she had submitted her comments to staff, who had not replied. She offered to assist staff in writing a better letter. Mr. Mesbah stated that he had not had time to reply to the late e-mail, but agreed with Commissioner Terrell's request. He noted that the legislation may miss the deadline for the end of the legislative session, but if time allows he looks forward to working with Commissioner Terrell on the letter. Motion to table carried unanimously on voice vote.

**12. Consideration of letter in response to the Wisconsin Department of Natural Resources proposed revisions to three Administrative Code rules (NR 102, NR 217, and NR 151) aimed at controlling phosphorus discharge to the waters of the state**

Moved by Ms. Terrell, seconded by Mr. McKeever, to approve the letter. Motion carried unanimously on voice vote.

**13. Consideration of Recruitment Brochure**

Mr. Gjestson noted that Budget and Personnel Panel members were to review and offer edits; Mayor Hochkammer had requested a reference to local hospitals be added to the description of the Dane County area. Moved by Mr. McKeever, seconded by Mr.

Sonnentag, to approve the brochure with changes made at the discretion of staff. Motion carried unanimously on voice vote.

**14. Report and Discussion on the FUDA planning process**

(Staff report on this item provided with Item #6; no other discussion was held).

**15. Discussion of affiliation with Dane County Lakes & Watershed Commission**

Mr. Gjestson reported that Gerald Jenson, Dane County Lakes & Watershed Commission member, prior to leaving the meeting earlier had requested that the item be discussed at the May meeting. Ms. Terrell requested that staff arrange a meeting with CARPC and DCLWC Executive Committees to discuss the agencies' relationship; there were no objections.

**16. Communications**

The following were provided at members' places: 1) E-mail dated April 8, 2010 from Chair Van Kampen providing the text of his motion on item #7; 2) letter dated April 8, 2010, from Mayor Jon Hochkammer, City of Verona, indicating support for CARPC coordination of an assessment of the Upper Sugar River watershed, monitoring and adaptive management processes in stormwater management, and assuming responsibility of City stormwater management facilities if they fail; 3) letter dated April 8, 2010, with attached August 12, 2009 letter, from CRANES regarding the TAC recommendation and the Verona USA proposal; 4) memo from Dane County Towns Association requesting deferral of action on the Verona USA proposal; 5) memo dated April 5, 2010, with attached memo dated August 5, 2009, from Western Dane County Coalition for Smart Growth and Environment opposing the Verona USA proposal; 6) letter dated April 5, 2010, from MMSD requesting district customers to comment to DNR on proposed phosphorus regulations; and 7) note from staff indicating April 7 telephone request from Mayor Hochkammer to amend the Executive Director recruitment brochure.

**17. Report of Chair / Discussion**

**a. Report on Executive Committee meeting of April 8**

Vice-Chair Palm stated that the Committee had approved payment of bills, and had received a quarterly report (4Q 2009) on staff work activities and finances. He suggested that the work activity report provided good detail on staff work activities; the report is available to members upon request.

**18. Report of Deputy Director / Discussion**

None.

**19. Future agenda items**

None requested.

**20. Adjournment**

Moved by Mr. Palm, seconded by Mr. Sonnentag, to adjourn; motion carried at 11:05 p.m.

Recorded by Chris Gjestson