

CARPC Policies & Criteria Advisory Group

October 7, 2010 City-County Building Rm 321, 210 MLK Jr Blvd, Madison WI

5:00 p.m.

Present: Phyllis Hasbrouck, Jim Pulvermacher, Robert Phillips, Brad Murphy, Eileen Kelley, Tom Wilson, Bruce Sylvester

Absent: Sally Kefer

Staff Present: Bridgit Van Belleghem, Kamran Mesbah

1. Introductions

The meeting convened at 5:05 p.m.

2. Changes to the agenda

None.

3. Approval of the minutes of the meeting of September 2, 2010

Motion to approve by Mr. Sylvester. Second by Mr. Pulvermacher. Motion carried.

4. Continued discussion of comments and issues raised by local units of government regarding CARPC policies and criteria for sewer service areas, and next steps

a.ii. Working toward a set of performance standards for stormwater management (e.g. infiltration standards) that can be consistently applied to all development. [skipped a.i.]

Regarding the 6th bullet point on page 5, Mr. Murphy noted that this recommendation addresses the concern that USA approval standards change as the result of individual amendments without a process to evaluate and modify standards. He suggested adding language the bullet to read, "New standards, including those made possible by new technologies, should be required only after thorough evaluation regarding effectiveness and practicability by CARPC staff and/or the Environmental Resources Technical Advisory Committee."

Mr. Mesbah recalled the group discussing two ideas Mr. Phillips voiced at the last meeting. First, amendments are sometimes differed or held to standards for new unproven technology. Second, CARPC should have a review process to determine the use and feasibility of using new technology.

Mr. Murphy was concerned that new technologies and related standards would be enforced as conditions of approval. Mr. Sylvester agreed. Ms. Hasbrouck stated that it would be too restrictive to add this language to the recommendation if it prevents CARPC staff to recommend protective mitigation measures based on the vulnerability of impacted natural resources. Mr. Pulvermacher stated that as a builder he was concerned if he would be required to use the new technology, despite preferring a proven method.

Mr. Mesbah indicated that conditions of approval are performance based not tied to specific technologies. Therefore, a developer would be able to propose any measure that meets the performance intent of the condition of approval, if the proposed measure has been accepted as a BMP. So long that performance standards are met reliably, we are not concerned with how this is accomplished. Mr. Pulvermacher reversed the question and Mr. Mesbah stated that a new or unknown technology would not be approved without adequate research and assuredness that it will meet the performance standards. Mr. Mesbah asked if adding language reading “site specific” would deal with Ms. Hasbrouck’s concern about the language. Ms. Hasbrouck was satisfied with this change.

[Mr. Phillips arrives at 5:15 p.m.]

Mr. Murphy asked if the recommendation still carried meaning with this addition? Mr. Sylvester noted that in theory standards could state “springs should be protected with a set back” for example. If there are no standards like this, the Commission could create them through the public process.

Mr. Mesbah informed the group that the current standard is “you need to mitigate the adverse impacts of your development to the maximum extent practicable.” Mr. Murphy noted that in that case, CARPC would still have the ability to impose protective conditions of approval even with a language not to adopt new standards without due process. Mr. Mesbah said this was true. Mr. Sylvester stated that this language is too vague. Typically, he notes, communities have a goal for public health and back this with up front enumerated performance standards, such as preventing glare. He stated that the language should be so that if an adverse impact is not known at the time of an application, then the opportunity to address it by the CARPC has effectively passed. Ms. Hasbrouck noted, recalling the discovery of an important fish spawning area in a Village of DeForest USA request, that having vague language is one way we can protect the environment and catch unknown issues like this.

Mr. Murphy considered rewriting the last sentence to restrict the application of more stringent standards to “unique circumstances related to preserving water resources within the area.” Mr. Mesbah recalled cases where existing CARPC standards were not adequately protective, and restricting the language would not leave room to handle more unique cases. He noted that, unlike ordinances aimed at protecting health and well-being of citizens who can litigate if their property is damaged, the streams CARPC is charged to protect cannot do this. This places the commission under this tension of protecting the environment while working with units of government to make implementation of comprehensive plans possible.

Mr. Wilson liked the language as Mr. Murphy phrased it, and Mr. Murphy indicated that the new language is not intended to mean that you cannot apply conditions to unique circumstances. Mr. Wilson suggested that Ms. Hasbrouck’s concerns are covered elsewhere in the recommendations document.

Mr. Sylvester noted that including the language proposed by Mr. Murphy would go a long way to foster trust building and improving relationships between the

CARPC and the units of government. He suggested any new standard needs to be considered and adopted through a formal process. Ms. Hasbrouck noted that she understands the issues being expressing, but fears that the proposed language is not adequately clear that conditions of approval can be used for unique situations that need to be held to a higher standard. Mr. Mesbah said that because the recommendation does not take away the commissions ability to reject a project, he feels comfortable with this the recommendation.

Mr. Murphy explained that staff usually gives recommendations on how the project can avoid adverse impacts and works with the community to determine the steps to achieve the goals. To have a favorable staff recommendation the community generally takes on the challenge. Mr. Mesbah noted that staff analyzes the project impacts and suggests what the applicant can do to eliminate or reduce the impact without using standards. Sometimes staff may tell the applicant that the proposed land use will not work in this location and if the community insists, staff does not recommend the project to the Commission.

Ms. Van Belleghem suggested that CARPC could develop more specific resource based standards such as “do not damage trout spawning areas.” Mr. Mesbah noted that there are too many specific areas, and the intent is not to create a codification of all the things that could potentially be adversely impacted. The site analysis and broader impact analyses conducted as part of the staff analysis is intended to identify reasonably likely adverse impacts with data that justify and support such findings specifically related to the proposed land uses and other development characteristics.

Mr. Mesbah suggested that the intent of Mr. Murphy’s language would be clearer, and Ms. Hasbrouck’s concerns may be addressed, if the phrase “across the board”, or “region-wide” was added before “standards” in the beginning of this recommendation. All members are okay with these changes.

4.a.i Restoring the Flexibility Margin in CUSA growth area forecasts

Mr. Murphy stated that the flexibility margin actually worked quite well historically, and wondered why it was eliminated, and thought it should be maintained because the private market works in a lumpy fashion that is not always within the land area projected in 20-30 year acreage future land needs. He explained that cities and villages need additional land because often property owners that have land in the USA may say I am not ready to develop, and without the margin the jurisdiction may not have anywhere else to grow and it does not make sense to take it out in exchange for new lands. Ms. Kelley agreed, noting that so many factors affect a property owner’s decision to move ahead, and the flexibility factor helped deal with property owner preferences and market conditions.

Mr. Sylvester reminded that this issue led to creating this advisory group and they would be negligent to not come up with a recommendation addressing this. Ms. Hasbrouck thought it was bad enough that projections are based on past trends, such that a rapidly growing community is expected to grow as such into the future, instead of considering the carrying capacity of the environment. The

growth areas are not needs, they are wants, whereas, food and farmland and groundwater recharge areas are needs and are generally ignored. She contended that the flexibility factor would worsen this. Ms. Kelley stated that professional planners and decision-makers consider this through planning and the CARPC process is considering these issues as well.

Mr. Murphy reminded the group that projections are for the whole service area. He agreed that there is a regional growth management issue if we only rely on past growth rates, and that there also needs to be comprehensive planning that goes along with this. However, projections are needed to inform planning. He suggested that perhaps one day we will have a comprehensive regional growth and transportation plan.

Mr. Sylvester noted that each community decides how they are going to grow, by statute, and some communities may not want to grow vertically. Knowing this, CARPC says okay, here is how you protect the water under those development conditions.

Mr. Pulvermacher acknowledged that the FUDA process would be the first stepping-stone to meet this need for a regional plan. He told of meeting with consultants from Portland, Oregon while working on Hwy 12, who were surprised because they had never planned a roadway to limit growth. Mr. Sylvester stated that forecasting growth does not cause growth, and that determining how many people a jurisdiction needs to accommodate does not mean they are recruiting 500,000 people to move there.

Mr. Murphy said he would be satisfied with a statement stating CARPC would evaluate the use of the flexibility margin. Mr. Sylvester suggested that the Commission should consider reinstating the margin.

Ms. Hasbrouck expressed concern that people are not considering changing futures. Sometimes CARPC may determine they best way to protect the water is to not develop in the watershed. She asked why not start developing vertically before all the land has been used through green-field development. Mr. Sylvester responded that communities can choose to do that, but it cannot be mandated across the board.

Mr. Mesbah reminded the group of some recommendations already made for the RPC to work with individual communities to evaluate the density and type of development that makes sense for each community. This sets the stage for CARPC to develop a fresh approach to calculating land demand. He noted the Commission could do this with each community, based on planning elements included in FUDA. Combining all of these tools with the comprehensive update of the Land Use and Transportation Plan, slated for the coming years, should address these concerns.

Mr. Sylvester asked what land demand calculations have to do with water quality planning? Mr. Mesbah stated that growth projection is required by NR 121.

Mr. Mesbah stated that land demand flexibility margin determination needs to be based on proper analysis and evaluation. Mr. Murphy suggested that language “CARPC should consider including a flexibility margin in its land demand calculations.” Mr. Mesbah suggested developing a recommendation that asks the Commission to develop a new land demand methodology based on new Census data and the land use inventory, including an evaluation of how the land demand methodology has worked and what variables need to be considered. Ms. Hasbrouck is agreeable to this so long as this methodology incorporates global warming and changing futures. Mr. Murphy noted that those issues have already been covered as part of the recommendation on resilience factors. Ms. Hasbrouck is comfortable with the recommendation as Mr. Mesbah stated.

Mr. Wilson suggested, “The Commission should consider a flexibility margin based on a new methodology for land demand.” Mr. Sylvester agreed, and requested that flexibility margin be a component a new land demand calculation.

Mr. Wilson thought this recommendation falls under Recommendation #1. The group asked Mr. Mesbah to develop language for this recommendation.

b. Finalize recommendations

Mr. Murphy suggesting moving the section in red as the beginning of the introduction because it is positive. Mr. Pulvermacher suggested the second paragraph follow and to move the first paragraph to the end of the third. Mr. Murphy also suggested a preface with the mission of this effort. Mr. Mesbah asked if the language he added in the second paragraph was acceptable. Mr. Wilson stated that the last paragraph starting “review of regional land uses” needed to define “region.” Mr. Mesbah suggested “Capital Area Region.” Mr. Wilson said to also add “in the entire capital region” in the last sentence and to remove some remaining “The CARPC.”

Mr. Wilson also suggested, on page two, first dark bullet, second open bullet, adding CARPC in front of the “newsletter.” Also, change regional community to read with a capital ‘R.’ Regarding the yellow highlighted section, Mr. Wilson suggested, “CARPC should move forward with the FUDA planning process, even if only on a sub-regional basis in cooperation with local units of government.” He suggested including language on developing a new land demand formula on page 4. In the first square bullet on this page, edit out the second town. The group replaced “seamless” with “connected” in this sentence.

On page 5, Mr. Pulvermacher requested adding a sub-bullet about cost-effectiveness under the third bullet. Mr. Mesbah noted that staff includes this in choosing treatment options for treatment plants. Mr. Pulvermacher was concerned that if technology arrives, communities will be forced to use a technology even if it is not cost effective. Mr. Mesbah reminded the group that conditions and standards are performance based not tied to specific technologies. Cost analysis related to a development project typically comes from the developer who assesses the cost of each option, but it is up to the developer what measure to use to achieve the required outcomes. Also, he reminded the group that there is a recommendation for addressing economic factors.

The following are additional changes the group made to improve the document:
Remove “CARPC should” throughout the document.

Establish a workgroup to assess whether decisions being made by the CARPC are foreclosing future options. Remove “the” CARPC and add a period.

Repeat 2 square bullets on page 4 in section 2 and move the last two red bullets on page 5 to section 2 because they are about improving the USA process.

Fix the formatting error at “details.”

Page 6

Include town(s) plan review in the USA staff analysis. “Include a review all relevant plans in USA analysis.”

Implement an expedited process and delegate responsibility to process certain small, “no-brainer” applications to staff, with quick action by Commission. Remove “to staff.” Change to read “Implement an expedited process for,” and remove “and delegate responsibility to process.”

Invite municipal planning commissioners to explain local plans and policies. Change “municipal planning commissioners” to “decision-makers.” Move bullet to pg 2 under the first solid bullet.

Add “meet or exceed” to the open bullet under “Promote Good Planning,” and add “publish best practices on the CARPC website.”

Mr. Sylvester, addressing #5, brought up a concern that CARPC is only acting on USAs. He asked if the group should consider recommending that CARPC should seek to expand its authority to deal with areas outside of USAs that may be undoing the efforts of urban areas to protect water resources? Mr. Mesbah indicated that CARPC cannot work with the towns the same way it works with cities and villages, because its region-wide growth and development policies that apply to towns are advisory, while the water quality planning work related to the extension of sewer services are more regulatory. Mr. Murphy noted that, on page 1, the first bullet recommends a process that could potentially lend itself to such an outcome based on regional consensus-building. Perhaps state legislation changes could facilitate this expansion of authority.

Mr. Pulvermacher questioned if this was the responsibility of Dane County already. Mr. Sylvester asked whether the county talks to the farmer about their cows getting in the streams? Mr. Mesbah indicated that DNR does not have much enforcement power on this issue. Although DNR acknowledged that cows hinder water resources, they are not able to bring much enforcement to bear on the problem. He stated that the Water quality Plan already includes short-term actions recommendations for agricultural non-point source, but the group could add a recommendation for CARPC to continue to work with the Dane County Land and Water Resources Department to address agricultural non-point source issues. The group decides to include this recommendation.

Mr. Wilson asks Mr. Mesbah to write a conclusion for the document.

5. Set future meeting dates and times

The group will set the meeting date via email.

6. Adjournment

The meeting adjourned at 7:05 p.m.

Recorded by Bridgit Van Belleghem