

Draft MINUTES

Capital Area Regional Planning Commission

October 13, 2011

City-County Building Rm 351, 210 MLK Jr Blvd, Madison WI

7:00 p.m.

Present: Martha Gibson, Ken Golden, Eric Hohol, Jason Kramar, Ed Minihan, Warren Onken, Larry Palm, Kurt Sonnentag, Susan Studz, Caryl Terrell (by telephone)

Absent: Jeff Baylis, Zach Brandon, Peter McKeever

Staff Present: Chris Gjestson, Jason Granberg, Mike Kakuska, Kamran Mesbah, Mike Rupiper, Barbara Weber; Attorney John St. Peter

1. Roll Call

Chair Palm called the meeting to order at 7:04 p.m.; roll was recorded.

2. Approval of minutes of the September 8, 2011 meeting

Moved by Mr. Minihan, second by Mr. Kramar, to approve the minutes of the September 8, 2011 meeting; motion carried on voice vote (Ms. Studz abstained due to absence).

3. Review of agenda

No changes.

4. Public comment for items not designated for Public Hearing

Comments were made under the corresponding agenda item.

5. Verona "Southwest" USA Amendment: Consideration of Revised 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 Town of Verona.

The following registered in support of the proposed amendment: Bill Burns, City Administrator; Bruce Sylvester, City Planning Director; and Rob Montgomery, Water Resources Engineer, Montgomery Associates Resource Solutions representing City of Verona. The following registered in opposition: Gary Werner, president, CRANES. Available for questions: Tom Mugan, Wastewater Section Chief, Division of Water, DNR.

Mr. Burns stated that City staff was available to make a presentation upon request by the Commission. Commissioners posed questions to City staff. Mr. Golden asked for response to comments made about existing developable land already within the USA which might preclude expansion; Mr. Sylvester stated that the number of available platted vacant lots in the existing USA was approximately 500, not 700 as cited by County Executive Parisi (e-mail to commissioners dated Oct. 12, 2011). He described the general growth plan for the city, and responded to additional questions.

Mr. Onken asked staff to comment in general terms on the comments made in the memo dated Oct. 4, 2011, from Stefi and Arnie Harris to Mr. Mugan (provided in the CARPC meeting packet), regarding the Montgomery report. Mr. Rupiper stated that the memo appeared to reflect a misunderstanding of the Montgomery study; staff recommendations would not be changed based on the memo.

Mr. Golden referenced the last paragraph of the first page of the DNR letter dated August 15, 2011, to CARPC staff requesting reconsideration of the Verona amendment, and asked

Mr. Mugan to explain it and asked if DNR would support CARPC denial of the proposal. Mr. Mugan stated that DNR staff review of the Montgomery study was cursory; if CARPC denied the request it would need to conduct a more thorough review. He stated that staff at DNR was not available to conduct the detailed technical review for which it contracted with CARPC. He stated that Administrative Rules guided Department decisions. Ms. Gibson stated that reconsidering the proposal appeared to conflict with CARPC Bylaws concerning reconsideration; she stated that the rationale for CARPC denial still remained valid, so it was confusing why DNR would remand the amendment request back to DNR. Mr. Mugan stated that prior to the CARPC decision, DNR had not yet responded to the Montgomery report due to staff shortage and change-over, and local stormwater ordinance had been revised; this new information appeared to provide a basis for a re-consideration. Mr. Hohol asked staff to summarize the staff recommended conditions of approval and recommendations; Mr. Mesbah described the bases for the revised staff recommendations, and the framework within which CARPC decisions are made. He stated that while staff did not make a recommendation on the proposal in 2010, based on the subsequent decision by DNR that the Montgomery study was accurate and adequate, it now recommended approval with the conditions described in the Cover Sheet.

Motion by Mr. Hohol, seconded by Mr. Sonnentag, to adopt the Resolution with the conditions and recommendations indicated in the item Cover Sheet. Ms. Studz asked for confirmation that DNR had officially approved the Montgomery report. Mr. Mugan noted that while he had not personally reviewed the report, it had been reviewed and approved by DNR staff; Mr. Mesbah noted that DNR staff (Bob Hansis, Basin Leader, Sugar-Pecatonica River Basin) was involved in the steering and oversight of the report.

Ms. Studz asked about the development plan for the amendment area; Mr. Sylvester stated that the proposal was not developer-driven, but was sought by the City based on the areas being logical growth areas, and on the responsibility of the community to plan for growth rather than react to developer proposals. Area E was planned for residential, although the timing of development was not yet known. Discussion continued.

Mr. Golden expressed concern for the lack of a more detailed plan for Area W, especially given the proposed land use by a health care clinic and the need for accessible transit for its target populations. Mr. Sylvester stated that the streets would be internal to Area W; there would be sidewalks per City ordinance, but there was not yet a detailed plan. While Dean was the current landowner, there were no plans for immediate development and it was possible the land could be sold. Discussion continued.

Ms. Terrell asked if DNR would support a deferral of action until the Department could consider re-classifying Badger Mill Creek as a Trout II stream; Mr. Mugan answered that re-classification was done through the Administrative Rule-making process, and had been pursued historically without success, and was unlikely in the current legislature. Ms. Terrell asked Mr. Mugan to comment on the interpretation by Mr. Mesbah of the August 2011 DNR letter; Mr. Mugan answered that he had described it accurately. Discussion continued.

Mr. Palm invited public comment by registrants. Mr. Werner referred to CRANES letter to CARPC dated October 11, 2011, and suggested that action on the proposed amendment could be referred to a future date, especially since there was no pressure to develop. He stated that CRANES concerns were based on the impacts on the sensitive resources in the amendment areas; he stated that the proposal conflicted with the *Dane County Parks and Open Space Plan* which identified the areas as Natural Resource Areas. He stated that the

Hwy 151 bypass was the logical southern boundary for development. He urged denial of the request. Discussion followed.

Mr. Sylvester provided background on the development of the Montgomery study, which included the involvement of numerous stakeholders including Dane County, DNR and CARPC staff, and was supported by \$90,000 of City taxpayer money, and showed how growth in the area could occur. Mr. Golden asked if Area W was included in an adopted neighborhood plan; Mr. Sylvester stated that the City adopted the Southwest Neighborhood Plan in 2009; the non-residential land uses of Area W were consistent with the Plan. Mr. Kramar requested a brief presentation by the City; Mr. Sylvester complied.

Mr. Golden asked what the minimum vegetative buffer was in Area E; Mr. Mesbah answered 75 feet. Mr. Sylvester identified the creek with varying buffers on a map; Mr. Golden asked how wide the buffers were in that area; Mr. Mesbah stated that most of it averaged nearly 300 feet. Mr. Golden asked what the land demand was for the Verona USA by 2035; Ms. Weber answered that the most recent calculation indicated that 513 additional developable acres would be needed by 2035. Mr. Sylvester stated that about 50 homes per year were being built in the city on average.

Ms. Gibson spoke against the proposal as not meeting NR 121 requirements, based on a lack of need for the expansion and adverse impacts on valuable natural resources. In addition to vacant lots, there were infill opportunities that should be taken by the City prior to expansion. She referred to the CARPC staff analysis which identified alternative developable areas already within the USA, and cited concerns of impacts on the sensitive natural resources of the amendment area without application of a 100% stormwater stay-on standard, which the City declined to pursue. Mr. Mesbah noted that the 100% standard recommended by staff in its report was subsequently retracted based on the results of the findings of the CARPC Technical Advisory Committee, which concluded that science was not currently available to indicate that 100% was significantly more protective than the 90% standard as applied by CARPC. Ms. Gibson stated that regardless of the standard, it was not worth the risk for impacting these sensitive and highly valuable streams. Discussion continued. Ms. Terrell expressed concurrence with the concerns raised by Ms. Gibson. She stated that TAC had concluded that further research over a five-year period should be pursued on the 100% standard, after which TAC would re-visit its practicability; their conclusions did not allay CARPC staff concerns noted in its report. She objected to putting at risk the cold-water resources of the amendment area, in which significant fiscal investments had been made by local governments and stakeholders. Discussion continued.

Requested by Mr. Golden to separate the question by considering Area W and Area E separately. There were no objections. Mr. Palm proposed Area W be taken up first, without objection. Mr. Golden stated that the plan for Area W did not appear to be sufficiently detailed and the City needed to determine with certainty its land use in order to garner his support. Mr. Onken asked if the City would accept pursuing a 100% stay-on standard; Mr. Sylvester answered no. Motion to approve Area W failed 6-4 (Gibson, Golden, Minihan and Terrell voting no). Mr. Gjestson indicated that the bylaws required re-consideration at the next meeting.

Mr. Golden stated that the concerns of the staff analysis were addressed by the Montgomery study, a neighborhood plan was in place, and significant planning to protect the creek had been conducted; the 300-foot vegetative buffer provided more than adequate protection for the area. Mr. Minihan stated that 300 feet on very steep slopes was not necessarily adequate. He expressed frustration that the notion that farming land uses were always

worse than urban land uses; agricultural uses with proper stormwater protections were better for water quality than urban development. Discussion continued. Motion to approve Area E failed 7-3 (Gibson, Minihan and Terrell voting no). Mr. Gjestson indicated that the bylaws required re-consideration at the next meeting.

Mr. Palm suggested the meeting recess briefly; there were no objections. The meeting recessed by unanimous consent at 9:40 p.m.

The time for recess expired at 9:50 p.m. Mr. Palm suggested that the remaining member of the public in attendance who had registered to comment be allowed to speak on items 7 and 8. There were no objections.

7. Report and Discussion on FUDA planning process

Bob Wipperfurth, Chair, Town of Windsor, 7580 Martha Ln, DeForest, representing Town of Windsor, registered to speak. He requested guidance on expectations for the completion of the FUDA plan; he stated that Town representatives in the FUDA process for the Northern USA had asked questions about whether the steering committee was expected to vote on the plan, and whether the local municipalities were then expected to take action. Mr. Mesbah stated that information provided to steering committee and local government staff mentioned that the steering committee was helping in the development and direction of the FUDA activities, and was expected to make a recommendation to its local boards or plan commissions as an amendment to their Comprehensive Plan. He described the three general phases of the steering committee process: 1) Development of Environmental Conditions Reports, 2) scenario planning, and 3) decisions on which scenario should be recommended as Comprehensive Plan amendments. Mr. Wipperfurth stated that there was apprehension on how the acceptance of the steering committee findings may impact pending USA amendments.

8. Discussion of Draft Framework for SSA Application Review Fees and to set a public hearing date

Mr. Wipperfurth stated that the Town of Windsor opposed the fees if an application had already been submitted; he described the difficulty in changing rules mid-stream. Should CARPC approve fees, he requested proper implementation, which might include a phase-in period of six months to a year, to provide proper notice to communities.

6. Public Hearing: Consideration of Resolution CARPC No. 2011-19 adopting the 2012 Work Program and 2012-2017 Overall Program Design

a. Staff Presentation

None.

b. Public Hearing

Mr. Palm opened the public hearing. Mr. Werner stated that CRANES continued to urge CARPC to emphasize the FUDA planning process, and to implement a comprehensive county-wide approach at the onset of the process, rather than the current approach. He described the need for this approach due to the fact that natural resource boundaries do not match jurisdictional boundaries. Mr. Golden asked Mr. Werner to provide a list to suggest prioritization of CARPC work.

c. Consideration of Resolution CARPC No. 2011-19

Motion by Mr. Onken, second by Mr. Golden, to defer action; motion carried unanimously on voice vote.

- 9. Consideration of a motion to convene into closed session pursuant to Wis. Stat. 19.85(1)(g) to confer with legal counsel who is rendering oral or written advice concerning strategy to be adopted with respect to possible litigation with Dane County over the certified 2012 budget charge. The Commission intends to re-convene into open session immediately following this closed session item.**

Motion by Ms. Gibson, seconded by Mr. Sonnentag, to convene in closed session pursuant to the agenda item language (Mr. Palm read the language for the record). Motion carried unanimously on roll call vote; the meeting convened in closed session at 10:05 p.m.

Motion by Ms. Gibson, seconded by Mr. Sonnentag, to re-convene in open session; motion carried, the meeting re-convened in open session at 10:35 p.m.

- 10. Consideration of entering into contract to provide water quality management planning services to DNR effective July 2011 through June 2012**

Motion by Mr. Golden, second by Ms. Gibson, to approve the contract. Motion carried unanimously on voice vote.

- 11. Approval of October disbursements and Treasurer's Report for September 2011**

Motion by Mr. Sonnentag, seconded by Mr. Onken, to approve the October disbursements (in the total amount of \$131,341.00) and September Report; motion carried unanimously on voice vote.

- 12. Consideration of Resolution CARPC No. 2011-20 amending the CARPC Personnel Manual by adding a Voluntary Unpaid Time Off/Reduced Work Hours Program**

Motion by Mr. Minihan, second by Mr. Sonnentag, to adopt Resolution CARPC No. 2011-20. Motion carried unanimously on voice vote.

- 13. Consideration of convening a Bylaws Workgroup**

No discussion or action.

- 14. Report from Commissioner McKeever on status of CARPC Retreat planning and potential discussion of the recommendations of the Policies and Criteria Advisory Group**

Mr. Sonnentag reported that he was scheduled to meet with Mr. McKeever the following week to discuss the retreat.

- 15. Communications**

Two items were provided at members' places: 1) 2011 Annual Conference schedule for Oct. 27 and 28, with poster; and 2) "Recommendations and Feedback Received from some DCCVA Members", dated October 13, 2011, providing comments on the feasibility of USA amendment review fees. One e-mail had been sent to commissioners dated October 12, 2011, from County Executive Parisi re: Verona Urban Service Area Extension Reconsideration, requesting denial of the amendment request.

- 16. Report of Chair/Discussion**

None.

- 17. Report of Deputy Director / Discussion**

None.

18. Future Agenda Items

Mr. Kramar stated that local feedback in the NUSA FUDA process had been very minimal, and asked that the issue be addressed; Mr. Mesbah noted that additional outreach efforts were being made. Ms. Studz reported that a Town of Springfield participant in the FUDA process had expressed concerns; she suggested that CARPC convene joint sessions with local plan commissions and/or boards at the onset of the FUDA process, through which the individual communities can get more involved. Mr. Golden stated that identifying environmentally sensitive areas that might benefit from intergovernmental collaboration may provide a basis in part for identifying the next FUDA areas; he suggested acronyms such as FUDA not be used with the general public in order to avoid confusion. Mr. Minihan stated that based on Mr. Wipperfurth's comments, more clarity on FUDA should be sought. Mr. Palm reminded commissioners about the Annual Conference on Oct. 27 and 28.

19. Adjournment

Moved by Mr. Sonnentag, seconded by Ms. Gibson, to adjourn; motion carried at 10:45 p.m.

Recorded by Chris Gjestson