

Draft MINUTES

Capital Area Regional Planning Commission

May 12, 2011

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

7:00 p.m.

Present: Jeff Baylis, Curt Brink, Martha Gibson, Eric Hohol, John Imes, Peter McKeever, Ed Minihan, Larry Palm, Kurt Sonnentag, Susan Studz, Caryl Terrell

Absent: Zach Brandon, Jason Kramar

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

1. Roll Call

Vice-Chair Palm took the Chair and called the meeting to order at 7:08 p.m.; roll was recorded. He welcomed Mr. Baylis as a new commissioner, appointed by the Dane County Towns Association, and noted that Mr. Kramar had been appointed by the Dane County Cities and Villages Association on May 11. Mr. Mesbah introduced Jason Granberg as the staff Restoration Ecologist-Biologist.

2. Approval of minutes of the April 14, 2011 meeting

Moved by Mr. Imes, seconded by Ms. Gibson, to approve the minutes of the April 14, 2011 meeting. Ms. Studz asked for clarification on page 2 par. 8a.; Mr. Mesbah noted that the sentence "...were not deemed by the Village to not be suited for the type..." should read "...were not deemed by the Village to be suitable for the type..."; motion to approve the minutes as amended carried unanimously on voice vote.

3. Review of agenda

No changes requested.

4. Public comment for items not designated for Public Hearing

Jon Becker, representing himself, registered to speak; he suggested CARPC might obtain authority beyond those provided by DNR regulations by securing inter-governmental agreements among all local units of government in the county. He suggested members watch a webinar hosted by Smart Growth America (authored by Peter Calthorpe) to watch the section on Salt Lake City, which was conducting a planning process similar to FUDA scenario planning, but more efficiently since all governments participated in the process.

5. New business

None.

6. Report and discussion on FUDA planning process

Mr. Steinhoff reported on the FUDA planning process, which continued in the North Mendota and DeForest-Windsor areas. He referred to a written update provided at members' places ("FUDA Update to CARPC Commissioners", Thursday, May 12, 2011), which included an update on the Sustainable Communities Regional Planning Grant activities. He noted that the work plan for the Grant had been approved by HUD, and was available on the CARPC website. Staff responded to questions from commissioners. Mr. McKeever asked staff to have the Grant MOUs be brought to CARPC for approval to demonstrate its commitment to the process; Mr. Steinhoff noted that the MOU was available on the CARPC website, which ratifies the intent of the Grant Agreement. Mr. Mesbah stated that the MOUs had been brought to the Commission and authorization given to the Deputy Director to sign these on behalf of the Commission.

7. Discussion of designation of CARPC by DNR as areawide water quality planning agency, and discussion of relationship between CARPC and DNR

Mr. Ken Johnson, Administrator, Division of Water, DNR Bureau of Watershed Management, introduced himself. Mr. McKeever asked if CARPC would have a different authority, as viewed by DNR, if it were designated as the areawide water quality management planning (AWQMP) agency for the region. Mr. Johnson stated that DNR was the designated agency for the state; Department and CARPC roles would not change very much upon designation, but more deference would be granted to CARPC decisions on sewer service area amendments. DNR would still review those decisions under the federal Clean Water Act. Mr. McKeever asked if designation would allow CARPC to adopt amendments to the *Water Quality Plan*, as opposed to recommending amendments to DNR, as proposed by undesignated agencies. Mr. Johnson stated that DNR, as the designated agency, would still review and consider approval of all adopted amendments; but, similar to the deference afforded to DNR by a state Administrative Law Judge during public hearings, where the Judge makes the final ruling, CARPC decisions would be afforded deference by DNR, but DNR makes the final decision. Decisions are appealable. Discussion continued. Mr. Johnson noted that SEWRPC was currently the only agency in the state designated as the AWQMP agency for its region.

Ms. Terrell asked how DNR would treat USA amendments adopted by CARPC with locally-adopted standards included in conditions of approval; Mr. Johnson stated that once the Plan is approved, it is the State plan, which CARPC administers. She asked if DNR might change those standards to lower state standards; Mr. Johnson stated that he did not envision such a scenario once the Plan is adopted. He stated that DNR would *enforce* minimum state standards, but would *approve* the amendment with higher standards if consistent with the Plan. Local governments are charged with enforcement of conditions of approval which are beyond state standards. Ms. Terrell asked if DNR monitored compliance of local USA amendments; Mr. Johnson answered there was no formal compliance plan for USA amendments; action could be taken by DNR upon local non-compliance if it violated state standards. Mr. Mesbah confirmed with Mr. Johnson that so long as CARPC decisions are enforced through applicable local or County standards, its decisions to amend the Plan would be approved by DNR, so long as DNR is not expected to enforce standards which exceed those of the state.

Mr. Brink asked how designation was granted; Mr. Johnson referred to communications from DNR to CARPC which described the process, which included a demonstration of local support. Ms. Gibson asked if DNR would support CARPC decisions on Plan amendments if they were based not on negative water quality impacts, but on the proposal exceeding land demand projections demonstrating a lack of "need." Mr. Johnson answered no; DNR would support the decision if there were a nexus to water quality. Discussion continued.

Ms. Gibson asked if CARPC held any other authority other than that associated with water quality; Mr. Johnson answered no, except for those related to shoreland zoning that might be granted by Dane County through the Lakes and Watershed Commission. Ms. Terrell asked if DNR would have interest in working with CARPC related to specific water quality issues being addressed in the FUDA planning process; Mr. Johnson answered yes, and described previous collaborative efforts among DNR, RPC and other local governments, which resulted in the Department recommending higher standards. Mr. Mesbah summarized the discussion. Mr. Johnson described DNR efforts in water quality improvement and pollution protection.

Mr. McKeever noted that he was not convinced that designation held the same meaning as communicated by Mr. Johnson. Ms. Terrell stated that standards for an Outstanding Resource Water should be higher than those met by BMPs, since BMPs are based on averages. Mr. Johnson agreed, which is why DNR has previously worked with CARPC staff and others to achieve higher standards for some resources. Mr. Baylis asked what data was used in determining BMPs; Mr. Johnson stated that BMPs were developed by the Standards and Oversight Committee (SOC) which included staff from several agencies, using data from across the state. Mr. Baylis noted that the UW Center for Limnology would likely provide data to fine-tune and improve BMPs in improving the Yahara lakes. Mr. Johnson agreed, and noted that if the local community wanted to improve the Yahara lakes to a mesotrophic state, it was incumbent upon the local community to utilize more aggressive standards than those of the state.

Mr. St. Peter requested that the Department begin to consider how it might treat what may be an outcome of the FUDA planning process, during which a region might agree via intergovernmental agreement (IGA) to growth limitations, and whether DNR would sustain a Commission denial of a USA amendment which was inconsistent with the IGA.

8. Presentation of Report: “Evaluation of CARPC’s Land Demand Forecasting Methodology to Determine Urban Service Area Boundaries”

Professor Kurt Paulsen, UW-Madison Department of Urban and Regional Planning, made a presentation on the first of three reports for which CARPC had contracted; the other two, analyzing policy impact on housing prices and land value, should be completed in the fall. He described the seven key findings and seven recommendations of the report. He summarized that the assumptions of the methodology reflected both technical and policy considerations, so it was difficult to determine if it was the best methodology to meet the requirements of NR 121. He answered questions posed by commissioners.

Mr. Palm stated that while staff was preparing its presentation for item #9, items #13 and 12 could be considered. There were no objections.

13. Consideration of Resolution CARPC No. 2011-12 Expressing Appreciation to Phil Van Kampen for His Service and Contribution to the Capital Area Regional Planning Commission

Motion by Mr. Minihan, second by Mr. McKeever, to adopt Resolution CARPC No. 2011-12. Motion carried unanimously on voice vote.

12. Consideration of Resolution CARPC No. 2011-11 Amending the 2011 CARPC Budget by increasing Consultant Services from \$0 to \$10,000 (fully funded by 2010 carry-forward) and increasing Telephone Expenses from \$5,800 to \$8,500

Motion by Ms. Studz, second by Mr. Hohol, to adopt Resolution 2011-11; motion carried unanimously on voice vote.

9. Public Hearing: Consideration of Resolution CARPC No. 2011-9 amending the Dane County Water Quality Plan by updating Appendix D: Urban Non-point Source Analysis

a. Staff Presentation.

Mr. Rupiper made a PowerPoint presentation on the Appendix D update, one of 11 technical appendices of the *Water Quality Plan*. He explained different design storms used in stormwater management planning and standards and measures to mitigate impacts, and issues and recommendations of the Appendix, including those regarding

stormwater rates and volume, groundwater recharge rates, rainfall rates, and lake chloride levels. He described the need for a separate study for a regional chloride management plan, which he recommended pursuing as directed through the Work Program. CARPC conduct of watershed-level plans should also be considered, and authorized through the Work Program, as should pilot programs for Badger Mill, Black Earth, and Token Creek watersheds. He stated that no comments on the Appendix D update had been received to date. Ms. Terrell stated that Table 8: WICCI Precipitation Changes on page 31 was confusing and should be clarified. She described the importance of the Analysis as an implementable plan which also serves to educate.

b. Open Public Hearing to take testimony from registrants; close Public Hearing

Mr. Palm opened the public hearing. Jon Becker, representing himself, registered to speak; he stated that issues associated with water quality included health and civic infrastructure issues, and moral issues which arise from impacts on downstream residents. He expressed support for CARPC non-point standards to be based on conditions at the time of settlement. He suggested that the Appendix D or other Plan Appendix might show how things would look if we were achieving pre-settlement rates of stormwater control or recharge, and that would be the next step CARPC could take to move beyond the 90% of pre-development stay-on standard. He stated that the 90% standard applied in the Cherokee Marsh proposal is to a crop-tilling agricultural area, and there were still 7 tons of sediment running off each year from the site. Using the pre-development standard in agricultural areas lead to problems such as that causing the Mississippi River dead zone; this report should look at the next step, or at least advise communities where we should be headed. He described impacts on civic infrastructure, such as reports by the Chicago Tribune that the Chicago Deep Tunnel system is now at risk from impacts of climate change. He stated that Cherokee Marsh had 2 million pounds of sewage dumped into the marsh because the storm event overcame the infrastructure; retrofitting was done. He stated that the June 2008 floods may not have been caused by a single 100-year event, but were due to back-to-back events which have happened more frequently. He requested that CARPC host Dan Vimont (Wisconsin Initiative on Climate Change Impact), who is working on Yahara region climate change predictions, which could be reflected in CARPC trend predictions, which should consider not just what has happened but what is likely to happen.

Mr. Palm closed the public hearing.

c. Consideration of Resolution CARPC No. 2011-9

Mr. Rupiper stated that pre-settlement could be done for peak rate control, as some communities currently do, but would likely have to go back to pre-settlement land conditions (eg. prairie conditions) for peak *and* volume control. If CARPC wished to review it, he recommended taking it to the ERTAC. He stated that pre-development assumptions were not based on agricultural land; he noted that a wide range of curve numbers applied to agricultural land, depending on its specific use; ordinance required the use of curve number of 68 for agricultural conditions, a conservative assumption compared to typical agricultural conditions. Discussion continued.

Ms. Terrell described the importance of implementation. She stated page 2, fourth bullet from the bottom of the page, should include CARPC in addition to the management agency, similar to other recommendations. Mr. Mesbah stated that CARPC stormwater review is done at the sewer extension stage; staff has not routinely

monitored actual practices, since monitoring and enforcement is generally done by Dane County or the local units of government that are management agencies for stormwater implementation within their territory. It was questionable if current workload would allow that activity. Ms. Terrell noted various typographical errors that should be corrected; she stated she could work directly with staff to make the corrections and clarifications prior to publication of the final document.

Motion by Ms. Terrell, second by Mr. McKeever, to defer action to the next meeting; motion amended at the request of the movers, without objection, to defer until the document has been revised based on staff discussion with Ms. Terrell. Motion carried unanimously on voice vote.

Ms. Gibson requested items 17 and 19 be taken up next. There were no objections.

17. Report of Chair/Discussion

Ms. Gibson expressed opposition to a CARPC Retreat; she stated that it was premature to conduct a retreat until all new members were appointed; it was also not appropriate to revisit the USA policies and criteria until the PCAG recommendations had been considered by CARPC. Mr. Palm stated that his intent of proposing a retreat was not meant to amend the policies and criteria, but to have more non-technical discussions about the Commission role and how it interacts; significant membership turnover merited that type of discussion. Discussion continued.

Mr. Palm referred to the draft 2012 budget at members' places, as recommended by the Executive Committee. The Committee recommended commissioners meet with the Budget and Personnel Panel to discuss getting additional revenue from Dane County or from fees in order to fund the Executive Director position. Mr. McKeever expressed dissatisfaction with the draft budget; more revenues were needed to hire an Executive Director, add support staff, and pursue work objectives. He described the importance of political leadership from the Panel. Mr. Palm noted that consideration of the draft would be on the June agenda.

19. Future Agenda Items

Mr. Palm suggested that election of Chair could be discussed at the next meeting. Mr. Hohol stated that discussion of the retreat should be discussed again.

11. Consideration of Resolution CARPC No. 2011-10 Revising the Income Tax Treatment of Employee Contributions to the Wisconsin Retirement System

Motion by Mr. McKeever, seconded by Ms. Gibson, to revise the tax treatment; motion carried on voice vote.

14. Consideration of authorizing Deputy Director to fill staff Planner position

Motion by Mr. McKeever, second by Ms. Studz, to authorize the hiring. Motion carried unanimously on voice vote.

10. Consideration of publishing 2010 Annual Report

Motion by Ms. Terrell, second by Mr. Hohol, to publish the Report. Mr. Palm requested any typographical changes be submitted to staff. Motion approved unanimously on voice vote.

15. Discussion of content and presentation of CARPC staff analysis reports on USA/LSA amendment requests, including consideration of amending current process to allow for staff presentations on USA amendment requests one month prior to public hearing

No action.

16. Communications

Three items were provided at commissioners' places: 1) staff FUDA update regarding agenda item #6; 2) draft 2010 Annual Report; and 3) preliminary draft 2012 budget.

18. Report of Deputy Director / Discussion

None.

20. Adjournment

Moved by Mr. Minihan, seconded by Mr. Imes, to adjourn; motion carried at 10:18 p.m.

Recorded by Chris Gjestson