

MINUTES (amended 6/10/10)
Capital Area Regional Planning Commission

May 13, 2010

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

7:00 p.m.

Present: Zach Brandon, Curt Brink, Martha Gibson, John Imes, Peter McKeever, Jeff Miller, Ed Minihan, John Murray, Larry Palm, Susan Studz, Phil Van Kampen

Absent: Caryl Terrell

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

1. Roll Call

Chair Van Kampen called the meeting to order at 7:05 p.m.; roll was recorded.

2. Approval of minutes of the April 8, 2010 meeting

Moved by Mr. Palm, seconded by Mr. Sonnentag, to approve the minutes of the April 8, 2010 meeting. Mr. Murray stated that page 3 par. 5 should indicate the correct seconder of the motion; Mr. McKeever stated that page 4 last complete sentence should indicate his support for a 100% volume control standard. Minutes amended by unanimous consent without objection; motion to approve minutes as amended carried unanimously.

3. Review of agenda

No changes requested.

4. Public comment for items not on the agenda

Mr. Van Kampen stated that after he had a discussion with County Executive Falk, he invited her to speak to the full Commission. Ms. Falk spoke to the Commission based on a prepared statement (dated May 13, 2010) requesting denial of the Verona USA amendment request.

5. New business

None.

6. Re-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: Mayor Jon Hochkammer, 111 Lincoln St., Verona; Bruce Sylvester, City Planner, 111 Lincoln St., Verona; Steve Gaffield, Montgomery & Associates, 119 S. Main St., Cottage Grove; and Phil Salkin, 944 Autumn Woods Rd., Oregon. The following individuals registered in opposition to the proposal: Dane County Executive Kathleen Falk, CCB Rm 421, Madison; and Manfred Enburg, 7710 Riverside Rd., Verona, representing the Town of Verona.

Moved by Mr. Miller, seconded by Mr. Murray, to approve Revised Resolution CARPC No. 2009-10 as amended at the April 8 meeting. Mr. Miller asked legal counsel to comment on whether FUDA was a required process; Attorney St. Peter stated that his memo on the topic described FUDA as an important planning concept. Mr. Miller asked if CARPC could

stop USA amendments to finish FUDA planning; Attorney St. Peter stated that CARPC was advisory to DNR; CARPC was not the designated management agency and its authority was by contract only, so DNR would need to respond to the question. Mr. Miller asked if DNR had been asked; Attorney St. Peter answered not to his knowledge.

Ms. Gibson asked Manfred Enburg to make comments to the Commission. Mr. Enburg expressed support for the Commission, and reported that no Town supervisors supported the proposal, and they had lost faith in what the Town can do relative to planning. He described lack of cooperative planning efforts between the Town and City; he described development proposals in the City as opportunistic, and encouraging sprawl. He described areas currently available for development without additional USA expansion. He stated the Town was willing to discuss boundary agreements with the City. Commissioners asked questions and discussion continued.

Mr. Van Kampen reported that he had met with Mayor Hochkammer, Chair Combs and Mr. Mesbah to discuss City-Town issues. Their relationship appeared to be good, and the meeting went exceptionally well; CARPC could play a role in their cooperation. Ms. Studz stated that Mr. Enburg's comments underscored a disconnect of information between the two communities; she stated that the Town Chair and Board may not be communicating, given that the Mayor and Chair had met and hadn't addressed the USA proposal. She asked Bruce Sylvester to speak to the issue of the alternative areas available for development referenced by Mr. Enburg. Mr. Sylvester stated that there were areas within the City available for development, but as CARPC staff has indicated the City needed around 700 acres of additional land to accommodate the projected population growth, and the proposed amendment area was appropriate and planned for development. Ms. Studz asked if a delay of CARPC action on the proposal would be problematic; Mr. Sylvester stated that the City would not be comfortable with a delay but a delay would not be highly problematic. Mr. Palm asked if the two areas were considered separately; Mr. Sylvester stated that the suggestion had not been raised before, the area had been planned for comprehensively. Mr. Minihan asked if extensive stormwater control was required for Area E; Mr. Sylvester indicated yes, it was a sensitive area which is why the City agreed to exceed the minimum state and county standards for volume control.

Commissioners asked questions of staff. Mr. Miller asked staff to explain its lack of a recommendation. Mr. Mesbah stated that if adverse impacts from a proposal could be documented and could not reasonably be mitigated, staff recommends against the proposal; if it is reasonable to expect that there is a good chance of mitigating impacts, staff recommends approval of the proposal, although the Commission must still weigh policy considerations; when complicated elements are involved, including policy decisions such as whether 90% volume control is protective enough, and where impacts are uncertain, staff reserves judgment to CARPC, but recommends conditions if CARPC chooses to approve. Ms. Gibson asked if DNR had commented on the Montgomery Study; Mr. Mesbah stated that he had inquired on multiple occasions without response. Questions and discussion continued.

Ms. Gibson described her opposition to the proposal. She noted that staff did not recommend approval of the proposal; the only other proposal not recommended for approval by staff was the Mazomanie proposal, which was denied by CARPC. She stated that the Upper Sugar River was an exceptional cold-water resource in a watershed with threatened and endangered species, and needed to be preserved and enhanced. She read passages of the staff report which referenced dangers of impacts of urban development on streams. She stated that the Commission's job is to protect water quality; if any

substantive question existed that the resources would not be protected by 90% volume control, the proposal should be denied. Part of the CARPC charge is to identify areas in Dane County that should not be developed; if the amendment area is not such a place, then there are no such places in Dane County. She stated that the staff analysis proposes alternatives, including locating the Dean Clinic in a location more accessible to the elderly. She described the staff analysis as indicating a lack of need for USA expansion since the current USA already had enough developable land. The City comprehensive plan identified the north and east as areas most appropriate for development, not the southwest. She noted that the staff analysis recommends that if the proposal is approved, it should control 100% of stormwater runoff volume. Mr. Palm asked staff to clarify the projected need for developable land; Ms. Weber stated that in addition to existing developable land in the USA, 700 acres of additional developable land were projected to be needed by 2035. Discussion continued.

Ms. Studz expressed concern that DNR had requested that the Montgomery Study be conducted but had not yet commented on it; she expressed support for deferring action until DNR has commented on the Study. Discussion continued. Mr. Miller spoke in support of the proposal. He asked how DNR would react to CARPC requiring standards beyond state standards; Mr. Mesbah stated that CARPC standards have always been beyond state minimum standards, and DNR accepts that so long as there is a basis for the higher standard.

Ms. Gibson asked Topf Wells, Chief of Staff, Dane County Executive, to speak to the issue of CARPC exceeding state standards. Mr. Wells stated that he'd addressed the issue in an e-mail (dated May 11, 2010) to Mr. Mesbah, which was forwarded to commissioners. He stated he had met with Todd Ambs, Administrator, DNR Division of Water, who had made it clear that his staff were to support the water quality work of CARPC, even if it went beyond state minimum standards, which was commonly done by local units of government. Mr. Brandon described the role of CARPC as balancing water quality protection with community development. He asked commissioners to recognize the good work put into the project, and to consider that the difference between 90 and 100% control may not provide such a difference that it would outweigh the community benefit. Mr. Palm asked why the City agreed to the 90 rather than 100% standard. Mr. Sylvester stated that the 90% standard was based on the results of the study of the amendment area which was conducted by Montgomery Associates and overseen by DNR and Dane County officials. Mr. Gaffield (hydrologist, Montgomery Associates) stated that the study reviewed the practicability of a 100% control standard; due to diminishing returns, the amount of land required to control the additional 10% of stormwater required substantially more than an additional 10% of land. The determination to use 90% was based on balancing cost and performance, and the current condition and tolerance of the receiving streams. He stated that the Study showed that if the watershed developed as projected by CARPC staff to 2030, and if stormwater management practices followed the 90% standard as proposed by Verona, runoff volume would increase 1 to 3%. Questions and discussion continued.

Mr. Miller asked who from Dane County was involved in the Study; Mr. Sylvester answered Kevin Connors (Dane County Land & Water Resources Dept.) and Bob Hansis (DNR) were members the group which oversaw and supervised the Study. He indicated that in March 2009, both reviewed and signed off on the Study. Mr. Mesbah stated that he was present, and did not believe that they had approved the Study, only that they did not object to the Study being used as a basis for a USA amendment request. He stated that it is essential that DNR – the agency requiring the Study – approve the Study. Ms.

Gibson asked about the extent of County staff involvement in the Study. Mr. Wells strongly disagreed with the interpretation that the County participated as a cooperative partner in the Study. He stated that Mr. Connors believed he did not have substantial input after the group's first meeting. He stated they were very concerned that although the charge of the Study was to maximize natural resource protection and to identify the lands needing safeguarding from development, the Study instead identified development opportunities and described water quality protections. Mr. Connors had stated directly that he had not reviewed nor approved the final Study report. Discussion continued.

Motion by Ms. Gibson, second by Ms. Studz, to postpone action until DNR has commented on the Study and the Town has had the opportunity to address its concerns with the City. Discussion followed. Mr. Minihan stated that the proposal should be denied and the City should re-apply by including its next proposal (Southeast Neighborhood) after an analysis had been done on a watershed-wide basis. Mr. Miller expressed opposition to the motion, and support for an amendment which adds a condition of approval requiring DNR approval of the Study. Discussion continued. Mr. Brink stated that any deferral should be to a date certain out of fairness to the applicant; discussion on postponement continued. Mr. Imes expressed opposition to the Resolution; he stated that the area impacted was an extraordinary resource, and the proposal had not been changed to address that. Ms. Studz expressed support for amending the motion to postpone action for two months; Ms. Gibson agreed. Chair Van Kampen stated the motion to postpone would be amended without objection; there was none. Discussion continued. Motion to postpone failed on roll call vote 3-9 (Gibson, Imes and Studz voting in favor).

Motion by Mr. Miller, second by Mr. Murray, to amend the motion by adding a condition requiring DNR approval of the Montgomery Study; motion to amend carried on roll call vote 7-5 (Gibson, Imes, McKeever, Minihan and Studz voting against).

Motion failed on roll call vote 6-6 (Gibson, Imes, McKeever, Minihan, Palm and Studz voting no). The meeting recessed for five minutes by unanimous consent.

7. Public Hearing: Consideration of Resolution CARPC No. 2010-7 amending the Dane County Land Use and Transportation Plan and Dane County Water Quality Plan by revising the Oregon Urban Service Area boundary and Environmental Corridors in the Town of Oregon

a. Staff Presentation

The time for recess expired. Ms. Weber made a PowerPoint presentation on the amendment request, which proposes to add 8.9 acres to the Oregon USA in the Town of Oregon northeast of the village, in order to accommodate a new church. She described the proposed land uses, which were consistent with the village and town plans. Mr. Kakuska described the natural resources associated with the proposal, which was in the Oregon branch of Badfish Creek watershed. Mr. Mesbah described the proposed stormwater management measures, which included the use of recreational fields for infiltration, and appears to control 100% of stormwater runoff volume even though the design is for 90% volume control. The stormwater plan should leave the area in better condition. Staff responded to questions by commissioners. Mr. Minihan asked if protections were in place similar to those for the Middleton/Westport ("Bishops Bay") proposal regarding third party maintenance of stormwater management facilities upon their failure. Mr. Mesbah stated there was a condition for facility maintenance, but not the third party enforcement requirement; the Village was considering an ordinance later in the summer which would allow it to contract

with the County for enforcement and provide a similar protection as the Middleton/Westport project. Without that, MOUs or other similar agreements would be needed.

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

Mr. Van Kampen opened the public hearing. Steve Staton, President, Village of Oregon, 456 Orchard Dr., stated that the proposal accommodated relocation of the First Presbyterian Church, which had been part of the community since 1845. He described the proposal as consistent with the comprehensive plan, which supported mixed uses downtown. The request represented infill development, and was supported by the Town. The Church had worked for three years with the Village, which had in turn also worked for two years with CARPC staff on the proposal. He referred to the CARPC staff-recommended conditions of approval of the staff analysis dated April 13, 2010. The Village agreed with conditions 1a through 1k (pg. 22) and recommendations 2 through 4 (pg. 23), which were supported by current Village stormwater ordinances; however, Recommendation 1 (pg. 23) requesting 100% volume control may not be achieved if and when project build-out occurs. He stated that the Church had spent three years designing for the 90% requirement; the Village will work with them to consider alternatives to reach the 100% standard over the coming years. He requested approval.

Matt Dregne, Attorney representing Village of Oregon, 3641 Sequoia Tr., Verona, registered to speak in support of the proposal. He stated that although specific language is unknown, a condition of approval to require the Village to empower another agency to enforce Village stormwater regulations would be an extraordinary measure. Currently, the Village administers its own stormwater regulations, although by ordinance the Village can empower Dane County Land Conservation to administer the ordinance, which would require an inter-governmental agreement with Dane County. Such an ordinance will be considered by the Village this summer. However, a CARPC condition of approval to force the Village to transfer its jurisdiction for enforcement is not reasonable or lawful and would be highly objectionable. He requested the Commission act on the proposal.

Mr. Minihan expressed concern for enforcement and maintenance of facilities given the Village history with stormwater management; Mr. Dregne stated that the conditions were such that the Church will be required to implement a stormwater management plan to be approved by the Village and CARPC staff; the Village would have the right under maintenance and easement agreements to conduct inspections and monitoring and to require compliance. Questions and discussion continued.

The following registered in support of the proposal: Mark Below, representing Village of Oregon, 117 Spring St., Oregon; Mike Slavney, 120 E. Lakeside St., Madison, representing Village of Oregon; and Joseph Eberle, W239 N 1812 Ridgeview Pkwy, Waukesha, representing Village of Oregon. There were no other registrants; Mr. Van Kampen closed the public hearing.

c. Consideration of Resolution CARPC No. 2010-7

Moved by Mr. Palm, second by Mr. Sonnentag, to adopt Resolution CARPC No. 2010-7 with the conditions and recommendations described in the CARPC staff analysis dated April 13, 2010.

Mr. McKeever asked Steve Jensen, representing First Presbyterian Church, to describe the Church efforts to incorporate Green Building elements. Mr. Jensen stated that they were attempting to achieve LEED certification, focusing on geo-thermal, with the effective use of rain gardens, bio-swailes and infiltration. Discussion continued. Mr. McKeever encouraged the use of pervious pavement and other LEED-supportive elements of development, and to increase the residential density. He asked that although staff indicated that the effect of the proposed stormwater management measures would result in 100% control of stormwater runoff, would the Church support a condition requiring 100% control. Mr. Jensen stated he thought they could support it, although they preferred the 90% condition due to challenges associated with the site receiving off-site runoff, but would try to achieve 100%. Joe Eberle, Village Engineer, stated that the development provided over 90% control, but he was not fully comfortable with 100%, although the Village would endeavor to achieve it. Discussion continued.

Moved by Mr. Minihan, seconded by Mr. McKeever, to add a condition requiring that Dane County Land and Water Resources Department shall have construction and maintenance review and enforcement authority over erosion control and stormwater management structures and facilities in the amendment area. Attorney St. Peter stated that, consistent with Mr. Dregne's comments, CARPC could not compel a local government to contract with another. He read the language that was being proposed as a condition of approval: Approval is subject to confirmation that the village has entered into an intermunicipal agreement with Dane County Land and Water Resources Department in which the county has agreed to exercise construction and maintenance review and enforcement authority over erosion control and stormwater management structures and facilities in the amendment area if the village fails to enforce its stormwater ordinance. Mr. Brandon stated that because this issue appeared to be raised on a regular basis, the Commission should discuss it separately as a policy matter. Mr. Imes expressed opposition to the motion to amend because the design behind the proposal appeared extraordinary, although a similar amendment may be appropriate for some proposals; he expressed opposition to have one particular policy for all proposals. Discussion continued. Motion to amend failed 3-9 on roll call vote (Gibson, McKeever and Minihan voting in favor).

Main motion to adopt carried unanimously on roll call vote.

8. Public Hearing: Consideration of Resolution CARPC No. 2010-8 amending the Dane County Water Quality Plan by adopting stormwater runoff volume control standards

a. Staff Presentation

None.

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

Mr. Van Kampen opened the public hearing. Jon Becker, 4233 Kenwood St., Madison, spoke in opposition to the proposal. He stated that he had been told by a person familiar with the Verona amendment request that 90% volume control needed 3% of the area to be used for infiltration, and 100% needed 6% of the developable acreage. He asked the Commission to adopt the higher 100% standard, which would create less impervious surface, and require less improvements resulting in less cost. He stated that the research was supported by that for the City of Madison Cherokee Marsh proposal in 2007. He asked that the TAC be asked if it fully considered climate change

into its recommendation. He stated that the Commission should remain mindful of the impact of impervious roads on amendment areas.

Kent Disch, 5936 Seminole Centre Ct., Madison, representing Madison Area Builders Association, thanked the Commission for considering a baseline to guide requests so developers have a standard to target. He requested that a cost-benefit analyses or economic impact report be provided on the TAC proposal. He questioned the rationale for the recommendation that more than 2% of developable area ("cap") may be used for infiltration to meet standard; he stated that the issue had previously been reviewed extensively for a County-proposed standard, when it was found that models indicated that exceeding 2% infiltration area actually was detrimental to recharge. Mr. Mesbah noted that the language was identical to that currently in Dane County ordinance; Mr. Disch stated that the language should be clarified. He requested that action be deferred until MABA membership had sufficient opportunity to consider and comment on the proposal.

Harry Reid, 2545 Van Hise Ave., Madison, spoke in support of the proposal. He stated that increased rainfall can be expected due to climate change. He referred to a Chicago area publication from 2002 that reviewed the 12-year average for Chicago was 4.4 storms per year, 40% more than 1948 to 1980 period, which reflected a Midwestern trend in heavier rainfall. He referenced another paper which made the same conclusion. He referenced National Academy of Sciences literature which projected increases in storm severities and frequencies due to global warming, including a projected 100% increase in Atlanta and New York City. He expressed support for a more restrictive 100% volume control standard, to help prevent impacts from more severe weather. Mr. Van Kampen closed the public hearing.

c. Consideration of Resolution CARPC No. 2010-8

Moved by Mr. Palm, second by Mr. Sonnentag, to defer action for two months while keeping the record open to receive written comment until the July meeting. Mr. Palm asked that TAC members be invited to attend the July meeting. Motion carried unanimously on voice vote.

Mr. Van Kampen stated that without objection, item 13 would be taken up next.

13. Report and Discussion on the CARPC RFP for the Yahara Lakes Legacy Partnership CLEAN project

Sue Jones, Dane County Lakes & Watershed, in attendance with Susan Josheff, DNR, described the project.

9. Consideration of policy governing public comment at CARPC and CARPC standing committee meetings

Motion by Mr. Palm, second by Mr. Sonnentag, to defer consideration. Motion carried unanimously on voice vote.

10. Consideration of a motion to convene into closed session pursuant to Wis. Stat. 19.85(1)(c) for considering employment, promotion, compensation or performance evaluation data of any public employee over which the governmental body has jurisdiction or exercises responsibility, so that CARPC staff may discuss personnel matters with the Commission; and also pursuant to 19.85(1)(g) to confer with legal counsel who is rendering oral or written advice concerning strategy to be adopted

with respect to litigation in which it is likely to become involved with the Village of Mazomanie and the Department of Natural Resources. The Commission intends to re-convene into open session immediately following this closed session item

Mr. Van Kampen noted that a closed session to consider personnel matters was not necessary. Motion by Mr. Murray, seconded by Mr. Sonnentag, to convene into closed session pursuant to the language in the agenda item regarding conference with legal counsel. Motion carried 11-1 by roll call vote (Mr. Miller voting no).

11. Re-convene into open session

Motion by Mr. Van Kampen, seconded by Mr. Palm, to re-convene into open session. Motion carried unanimously.

12. Report and Discussion on the FUDA planning process

Item deferred by unanimous consent without objection.

14. Communications

Communications were provided in the meeting packet; a draft 2011 budget was provided by the Executive Committee at members' places, to be considered at the June meeting. Three additional items were provided prior to the meeting: 1) letter dated May 12, 2010, from CRANES requesting adoption of 100% volume control standard; 2) e-mail dated May 12, 2010, from Stefi Harris supporting 100% volume control standard; and 3) letter dated May 12, 2010, from CRANES regarding the Oregon USA proposal. Phil Salkin, 944 Autumn Woods Ln, Oregon, representing REALTORS Association of South Central Wisconsin, registered in support of its letter dated May 7, 2010 requesting creation of an Economic Analysis Committee.

15. Report of Chair / Discussion

a. Report on Executive Committee meeting of May 13

Mr. Van Kampen reported that the Executive Committee had approved payment of bills and had received a recommended draft 2011 budget from the Budget Workgroup. The Committee agreed that the budget should include sufficient resources to support FUDA planning; a preliminary draft line item budget was provided at members' places. The draft budget would be considered at the June meeting for recommendation to the Budget & Personnel Panel.

16. Report of Deputy Director / Discussion

None.

17. Future agenda items

None requested.

18. Adjournment

Moved by Mr. Sonnentag, seconded by Mr. Palm, to adjourn; motion carried at 11:46 p.m.

Recorded by Chris Gjestson