

MEMO

To: Chairperson Scott McDonnell
Supervisors Dane County Board of Supervisors: Capital Area Regional Planning Commission

From: Mark Hazelbaker, Dane County Towns Association Legal Counsel

Date: July 21, 2011

Re: Process for Certifying the Levy for CARCP

The possibility of a compromise on the amount of the 2012 levy for the Capital Area Regional Planning Commission has not yet been exhausted because the proper authority, the Budget and Personnel Panel (BPP), has not certified the Commission's levy. The Commission has apparently forwarded a levy. However, the Executive Order and the Resolutions which created the Commission gave that authority to the BPP, so the process is not final.

You will recall that the process of creating the CARPC was lengthy and difficult. More than fourteen drafts were necessary to reach agreement on all the details of the resolution adopted by the communities in Dane County. One essential element of the Resolution was that the new commission would have two separate bodies.

The body known as the commission exercises the water quality planning authority and other planning functions of a regional planning commission under NR 121, Wis. Adm. Code, and 66.0309, Wis. Stats., respectively. However, the "membership plan" adopted for the Commission created a separate entity, the Budget and Personnel Panel. The bicameral structure of the new Commission was established in the new commission's enabling resolution (the "Resolution") pursuant to the parties' authority to constitute the Commission according to a "membership plan" as defined in sec. 66.0309(3)(b), Wis. Stats.¹.

Nothing in the statute limits the flexibility of local units in structuring a new commission. This part of the Resolution was critical. Experience with the former commission led the framers of this commission to vest fiscal authority of the Commission in solely with elected officials. That was done by creating the BPP. Under the resolution creating the RPC, "The Budget and Personnel Panel shall have the power, on behalf of and with advice of the CARPC: i. to establish the levy and user fees and adopt the annual operating budget for the CARPC."

¹ "(b) For any region which does not include a 1st class city, the membership composition of a regional planning commission shall be in accordance with resolutions approved by the governing bodies of a majority of the local units in the region, and these units shall have in the aggregate at least half the population of the region."

It has been suggested that state statutes override the membership resolutions. If that is true, then everything in the Resolution beyond creation of a commission is preempted. There would be no levy limit, no BPP at all and no FUDA process. Either we accept all of the structure that was built in to this commission, or we may have nothing.

There continue to be discussions among the Budget and Personnel Panel members about the 2012 levy. In my opinion, the final word on the commission's levy is that of the BPP, not the commission. I do not suggest that the County should defer adopting the resolution it before tonight. Because of the timelines involved in the statutes and the fact that the County Board meets just once in August, it may not be possible to do so otherwise. However, I would hope that all parties would tailor their remarks and actions in a way that leaves open the possibility of settlement rather than drawing lines in the sand which will create animosities that will persist beyond this one vote.

Because of state statutes, the Commission's levy is charged against Dane County's levy limit. The commission members see this levy as a pass-through. That is true, as I have noted in an earlier memo. But, the County's fiscal challenges must also be considered by the commission. These factors make it important to rely upon the possibility that the BPP may yet be able to resolve this matter. I appreciate your attention to this memorandum.