

SONAR?

BASIS FOR THE CHANGES TO THE METROPOLITAN SIGNIFICANCE RULES

BACKGROUND

The metropolitan significance rules are authorized under Minnesota Statutes 473.173. The statute itself (subd. 5) establishes the need for and provides evidence in support of the rules.

The rules set standards, guidelines and procedures for determining whether any proposed project is of 'metropolitan significance.' As directed by the statute, the Council reviews all proposed projects determined to be of metropolitan significance as to their consistency with and effect upon metropolitan system plans and their adverse effects on other local governmental units. Under the statute, the Council has a review period of 90 days which, to avoid duplication, can be suspended for not more than 90 days to await completion of review of a project by another public agency. The statute also empowers the Council to suspend action on a proposed project during the review period and for a period not to exceed 12 months following the issuance of its final determination.

The Metropolitan Council adopted the current set of rules in 1978. Fundamentally, the revised rules vary little from these rules. Consequently, only substantive procedural and content changes are discussed below.

NEED FOR CHANGE

The metropolitan significance rules are now ten years old. Since they were adopted, the Council has reviewed and approved local plans under the Metropolitan Land Planning Act, and established and updated procedures for reviewing plan amendments, including the standards for determining regional system impact. The Council has also refined its hearing procedures for adopting and revising policy plans. It has revised all of its policy plans for metropolitan systems and it has established a plan for solid waste. All of these changes have contributed to the need for revising the rules. In addition, actual use of the rules over the past three years in the Mall of America, Homart and NBA Arena reviews has led the Council and participating communities to conclude that, based on these and other procedural and substantive factors, the rules needed revision.

EFFECTS OF THE RULES CHANGES ON LOCAL GOVERNMENT EXPENDITURES, AGRICULTURAL LAND AND SMALL BUSINESS

The Administrative Procedures Act (APA) stipulates that an agency adopting rules according to the act must consider the effects the rules may have on local government expenditures, agricultural land and small business.

Effects on Local Government Expenditures

Neither the current metropolitan significance rules nor the proposed changes to the rules automatically require the expenditure of public money by local public bodies. An expenditure of funds may occur (for example, to pay for the salaries of staff involved in the review or to hire technical experts or

additional attorneys), but only when the Council commences a metropolitan significance review. Since 1978 when the rules were adopted, the Council has commenced only seven reviews.

Furthermore, most of the cost of a review can be absorbed by the Metropolitan Council. The Council is and will continue to be responsible for gathering pertinent information for each review and will enter this information and an analysis of any relevant Council plans and policies into the hearing record. Consequently, the expenditure of public money by local governments is at their discretion and not required by the Council under the rules.

Effects on Agricultural Land

The Metropolitan Council has determined that the revised metropolitan significance rules would not have a direct or substantial adverse impact on agricultural land. In fact, the Council's Metropolitan Development and Investment Framework clearly indicates the Council's support for agricultural land within the region. To this end, the current metropolitan significance rules list the following as one of the system effects for determining whether a proposed project is of metropolitan significance: the issuance of a land use permit in an outlying community for a critical development which could reasonably be expected to lead to...the disruption of commercial agricultural use. The changes to the rules will not affect the Council's support for agricultural land.

Effects on Small Business Considerations

The Council has determined that the only plausible effect the rules may have on small business is when a small business is a project sponsor. However, a proposed project which meets the threshold criteria would have 1) a potential impact on one of the metropolitan systems, 2) a potential impact on a publicly financed facility or 3) a substantial effect on existing or planned land use of development within a local governmental unit other than the local unit in which the proposed project is located. It is highly improbable that a small business would propose a project that could cause such effects.

GENERAL CHANGES

To increase clarity, much of the cumbersome, legalistic language has been reworked or eliminated in the revised rules and the voice is now active instead of passive. Furthermore, the rules have been reorganized so that required actions and procedures are presented in the sequence of occurrence. For example, the section discussing the implementation hold during review is now found in the commencement section, rather than the general provisions at the end of the current rules. Similarly, the discussion about phased, proposed projects is found in the review alternatives section, rather than in the general provisions. The intent of these changes is to improve the reader's understanding of and expectations about the significance review process.

None of these general changes will be discussed in the section by section review that follows.

SECTION BY SECTION CHANGES

5800.0010 PURPOSE

The purpose section has two minor changes. It no longer includes the phrase that assures the rules will protect the health, safety and welfare of the residents of the area. Rather, the purpose focuses on promoting the orderly and economic development of the metropolitan area which is consistent with the enabling legislation.

An new sentence was added which states that the Council's intent under the rules is not to stop development, but to work to achieve consensus among the parties. Although the legislation refers to promoting orderly development, the Council also wants to emphasize use of the rules as a way of achieving agreement among disagreeing parties on major new development in the region.

5800.0020 DEFINITIONS

The definitions section reflects changes made throughout the rules. Terms no longer found in the rules have been dropped, while new terms referred to in the changes have been added. Several definitions have been refined to make them consistent with current Council policy plans or guide chapters.

5800.0030 STANDARDS FOR REVIEW

This section was not substantively changed in the revised rules.

5800.0040 CRITERIA FOR DETERMINING METROPOLITAN SIGNIFICANCE

The revised rules contain three types of criteria for determining metropolitan significance - those that apply when a proposed project affects a metropolitan system, when it is publicly subsidized and when it affects a local governmental unit. The criteria addressing publicly subsidized projects is new to the revised rules. The other two sets of criteria are found in the current rules, although both have been revised.

In the revised rules, the system impact standards in the plan amendment guidelines have been substituted for the current physical system effects. This change not only introduces greater consistency among Council procedures, it updates standards that are now more than ten years old to reflect current policy plans. The revised rules also include a solid waste criterion that is not addressed in the current rules. This criterion was added to reflect the Council's increased statutory role in the area of solid waste.

The Council's regional policy plans themselves are incorporated into the new rules by reference to ensure there is sufficient detail to make a determination of regional system impact. Although the plans are revised periodically, the Council seeks substantial public input in the revision process, similar to the amount and type of input that results from using the public hearing process outlined in the Administrative Procedures Act. In addition, when the Council gives notice of its intent to revise a plan and when it gives notice of the public hearing, it will advise the public that changes in the plan may affect the standards for determining projects of metropolitan significance.

The current rules do not specifically address the criteria the Council will use to determine when to initiate a review based on potential economic effects.

This resulted in considerable criticism of the Council and the Council's authority in the two reviews where the Council raised economic issues about a project. The revised rules now clarify the limited instances where the Council would get involved in projects that have a potential economic impact - where a proposed project with public subsidy threatens a publicly financed facility. The Council is concerned with the use of public subsidies to compete with facilities in other communities that are supported directly with taxpayer dollars. This was the most thoroughly discussed and controversial of the proposed changes. It represents substantial input from local government and the Council itself.

The revised rules also clarify that local governmental unit effects, like regional system effects, focus on physical effects. The current rules are ambiguous on this point, stating only that they encompass a substantial effect on existing or planned land use or development. The revised rules also list examples of the types of physical effects likely to be of potential significance, including traffic, stormwater runoff and air, noise and groundwater pollution. Because commercial agriculture designations are controlled locally, the local effects also specifically address disruption of commercial agricultural use. This is a change from the current rules where disruption of commercial agricultural use is listed under system effects. Since the passage of the Agricultural Preserves Act, designation of this use has become a local responsibility and hence, is more appropriately included under local effects.

5800.0050 EXEMPT PROJECTS

The rules now exempt matters that are consistent with a Council-approved local comprehensive plan from review for system impact. The revised rules clearly identify that this determination of consistency is a Council responsibility and that it is tied to system impact. The rules no longer provide for reevaluation of an existing local plan prior to the adoption of a plan under the terms of the Metropolitan Land Planning Act since all communities (except Landfall) now have such a plan.

The current rules allow initiation of a review up to the time of construction or major site alteration. This creates uncertainty for the city and the developer as to whether they will have to undergo a significance review. With input from local government, the rules now tie the vesting of a proposed project to environmental or local review processes. Specifically, a proposed project has vested rights 30 days following a negative declaration on an Environmental Assessment Worksheet or a determination of adequacy on an Environmental Impact Statement, or in the event no environmental review is required, 30 days following the local approval of a plan amendment or rezoning to accommodate the proposed project.

5800.0060 INITIATION OF REVIEW

This section was not substantively changed in the revised rules.

5800.0070 PRELIMINARY FINDING OF METROPOLITAN SIGNIFICANCE

This section incorporates the examination subpart from the current commencement section, which covers how the Chair will review an information submission.

This activity has been expanded under the revised rules to include two new steps in the review process: a preliminary finding of metropolitan significance and a scoping of issues.

The current rules do not clearly specify a time period for the Chair to review an information submission and related materials. The revised rules correct this shortcoming by providing 10 working days for the Chair to examine them. The revised rules also provide a bridge between the examination and commencement of a review, thereby making it clear what basis the Chair has found for commencing a review. Under the revised rules, the Chair must make a preliminary finding of Metropolitan Significance, based on the examination of materials meeting the same requirements as outlined in the current rules.

The revised rules also add a scoping element that states that the Council Chair will identify what issues will be included in the review at the outset of the review process. This approach replaces the scope of review section in the current rules where the committee is allowed to consider all criteria for determining metropolitan significance, regardless of whether they are raised in the information submission. It will eliminate the introduction of extraneous issues and reduce confusion among the parties about the focus of the review. In essence, the scoping element is intended to increase the fairness of the review process and reduce unnecessary work and expense by the parties to the process.

5800.0080 COMMENCEMENT AND DETERMINATION NOT TO COMMENCE

As discussed immediately above, this section no longer contains the subpart on examination of submission materials. However, it does incorporate two elements contained elsewhere in the current rules - information on the length of the review period (90 days unless suspended or extended according to the rules) and the hold on project implementation during the review period.

The only substantive change in this section is the point of commencement. Because the revised rules specify a time period prior to commencement of the review for examination of the submission materials, the time of commencement was changed from the date of submission of these materials to the date of the commencement order. To be consistent, a Council-initiated review will also start on the day the Council adopts a commencement order as opposed to the day following its adoption.

5800.0900 SIGNIFICANCE REVIEW COMMITTEE

This section was not substantively changed in the revised rules.

5800.0100 REVIEW ALTERNATIVES

The revised rules discuss four possible review alternatives: mediation, a public hearing held by the significance review committee, a public hearing held by an administrative law judge and a review of part or all of a phased proposed project. Only mediation is new to the review process.

During the course of discussing what changes were needed in the metropolitan significance rules, many local governments indicated an interest in the Council providing mediation among the parties to a disputed project in place of the full hearing process. Consequently, the revised rules allow a 30-day

suspension of the review process to resolve differences among the affected parties. In the event an agreement is not reached within the 30-day period, the regular review process will resume.

As stated above, the rules currently provide for a public hearing conducted by the significance review committee, or if the committee desires, by an administrative law judge. The revised rules clarify that use of an administrative law judge is only for purposes of holding the public hearing, not for delegating the decision-making responsibility assigned to the Council by statute. In addition, the rules no longer specify the contents of the report of an administrative law judge in that they may vary from review to review.

5800.0110 STEPS IN HEARING PROCESS

This section incorporates several individual sections from the current rules. Changes to these sections are as follows.

To give the parties as much time as possible to prepare their preliminary statements, the deadline for submission of these statements has been changed from 20 to 30 days after the review is commenced. In addition, participation in the process by non-parties will be determined by the significance review committee. The current rules give no guidelines in this regard other than any person may voluntarily submit information relevant to the review at any time prior to the close of the public hearing record. This is an unnecessary guideline in that the public hearing procedures provide for such input.

In response to numerous comments from local governments, the significance review report, which is released at least 10 days prior to the public hearing, will no longer contain any Council staff analysis. To ensure that the report will not prejudice the review committee, but still provide them with necessary background material on the review, the report will now contain only a listing of the information submitted to the committee, a description of the proposed project, the review criteria that apply to the project and a summary of the issues presented in each of the preliminary statements. The revised rules do provide for Council-generated analysis, but they stipulate that such information may be submitted into the record of the public hearing.

Because of the short length of the total review process, the revised rules retain only a portion of the current section on discovery, namely that part concerning the committee's ability to order the production of relevant information and its sanctions if the parties fail to comply.

For hearings conducted by the significance review committee, the current procedures have been replaced by the hearing procedures the Council uses when it adopts or amends its regional policy plans. These procedures have the advantage of being familiar to local governments in the region.

5800.0120 COMMITTEE REPORT TO COUNCIL

The revised rules do not contain any detailed listing of the contents of the report, rather they focus on the structure (findings of fact, conclusions and recommendations) and the basis of the report (information submitted before the close of the record of the public hearing). The rules do specify that the

report may include comments on the consistency of the proposed project with Council plans and policies as is common practice in Council referral reports. This addition to the rules is discussed in greater detail below.

5800.0130 COUNCIL DETERMINATION

This section is similar to its counterpart in the current rules. Although the revised section states that the Council too may comment on the consistency of the proposed project with other Council plans and policies, it further specifies that lack of consistency with plans and policies other than those listed in the criteria for determining metropolitan significance will not constitute a basis for a determination of metropolitan significance. This statement addresses local concerns that Council plans and policies other than those included in the listed significance criteria might become a basis for the actual determination of metropolitan significance.

5800.0140 TERMINATION, SUSPENSION, EXTENSION, AND COORDINATION

This section contains two basic changes from the current rules. The current rules allow suspension of the review process to await completion of review of a project by another public agency. The revised rules expand this provision to allow for the completion of a plan amendment review by the Council. The plan amendment procedures, which are familiar to local governments and simpler than the significance rules, may be used as an effective alternative to the significance review process when the issues involve potential metropolitan system impacts.

The provision for extension of the review is new to the rules. It is similar to the data collection provisions in the suspension subpart, but allows the review process to continue, rather than be put on hold, while the data is being gathered.

5800.0150 JUDICIAL REVIEW

This section was not substantively changed in the revised rules.

DROPPED SECTIONS

A number of sections were not carried over from the current to the revised rules. They include the following.

Exclusive Comprehensive Review: This section exempted any proposed project subject to review and approval under the Power Plant Siting Act. It was included in the rules because 1) power plant siting was a major issue at the time the rules were being drafted and 2) the plant siting process is very comprehensive. However, it is unlikely that any power plants will be proposed in the region in the foreseeable future and thus it seemed unnecessary to retain this provision.

Stipulated Procedure: With the changes to the public hearing procedures, the addition of mediation and the streamlining of discovery, this section was no longer needed.

Burden of Proof: The revised rules identify separate and specific hearing procedures to be used for public hearings conducted by the significance review committee and public hearings conducted by an administrative law judge, and thus there is no need for additional sections in the rules which provide details about the public hearing procedures.

Time Periods: Because it specified common practice in the computation of time, this section was considered unnecessary.

Letter of Interpretation: The letter of interpretation was intended to allow the Council to clarify the rules themselves. However, the process established to accomplish that task amounted to nearly the same thing as the review process itself and hence did not provide a meaningful alternative to the full process.

Right to Counsel: It is not necessary to specify that parties can be represented by legal counsel.

Retention and Availability of Information: This section is covered by the Council's public hearing procedures and the Minnesota Government Data Practices Act.

Confidential Information: Subsequent to the 1978 adoption of the current rules, the Minnesota Legislature in 1979 enacted the Minnesota Government Data Practices Act which controls the handling of data by state agencies, political subdivisions and statewide systems, including the Council. The Minnesota Government Data Practices Act thus supersedes the Confidential Information section of the current rules.

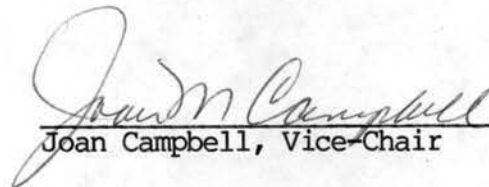
Severability: The notion of severability is no longer commonly used in Minnesota rules.

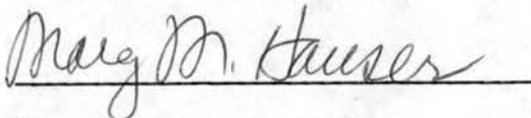
CERTIFICATE OF THE
METROPOLITAN COUNCIL

I, Joan Campbell, do hereby certify that I am a member and the Vice-Chair of the Metropolitan Council, a regional agency duly authorized under the laws of the State of Minnesota, and that the attached is a true, complete, and correct copy of the minutes documenting a motion adopted at a meeting of the Metropolitan Council duly and properly called and held on the 23rd day of June, 1988, that a quorum was present, and that a majority of those present voted for the motion which has not been rescinded or modified.

IN WITNESS WHEREOF, I have hereunto subscribed my name this 2nd day of March, 1989.

Attested to by:


Joan Campbell, Vice-Chair



Mary Hauser
Metropolitan Council Member

LM240A

