



State of Wisconsin \ DEPARTMENT OF NATURAL RESOURCES

Jim Doyle, Governor
Matthew J. Frank, Secretary

101 S. Webster St.
Box 7921
Madison, Wisconsin 53707-7921
Telephone 608-266-2621
FAX 608-267-3579
TTY Access via relay - 711

March 18, 2009

Jeffrey Miller, Chair
Capital Area Regional Planning Commission
210 Martin Luther King Jr. Blvd.
Madison, Wisconsin 53703



Subject: Mazomanie Request to Amend the *Dane County Water Quality Plan* by revising the Mazomanie Urban Service Area Boundary and Environmental Corridors in the Town and Village of Mazomanie

Dear Mr. Miller:

In October 2008, the Department of Natural Resources ("Department") received a request from counsel for the Village of Mazomanie asking the Department to disregard CARPC's denial of an Urban Area Service Area (USA) Amendment in the Village of Mazomanie and instead directly approve Mazomanie's USA Amendment request. Over the past few months, Department staff have reviewed the record of CARPC's denial of Mazomanie's amendment request and met with representatives from both Mazomanie and CARPC. Based on information in CARPC's record of the decision, the Department is concerned that ch. NR 121 of the Wisconsin Administrative Code does not support the CARPC denial of the amendment request. Furthermore, based on our understanding of recent discussions between CARPC and the Village of Mazomanie, we believe that there is room to negotiate an arrangement that will satisfy some if not all of your maintenance concerns regarding the storm water control facilities. Consequently, the Department is requesting that CARPC reconsider Mazomanie's request as soon as it can be scheduled for a Commission meeting, and to take into account the concerns expressed in this letter along with any accommodations offered by the Village to assure the long term protection of water quality in the area.

Pursuant to state statutes and administrative codes (chapter NR 121), decisions regarding amendments must be based on water quality impacts and the cost-effectiveness of sewerage systems. The CARPC technical staff analysis concluded that the proposed amendment, with certain conditions for mitigation of effects, would adequately address water quality and habitat impacts and that certain restoration measures might actually improve water quality and habitat in certain stream segments. The Department has concluded the staff analysis reflects a proper and careful analysis of the proposal consistent with standard best practices and analysis procedures.

We are aware that a significant concern of some Commissioners was that the long term maintenance of storm water facilities may be difficult due to the number and complexity of the control measures likely to be prescribed. The Department shares this general concern about proper maintenance, but this factor

alone is not a sufficient basis for denial of the associated development. The risk of control practice failure is inherent in all development projects. If CARPC were to apply this rationale and insist on complete assurance for all projects, then the Commission would recommend denial of nearly every proposed amendment or sewer extension under chapter NR 121. Also, the commitment by the Village of Mazomanie to be an active participant in the storm water control measures should greatly limit your concerns about proper maintenance.

As future development occurs in Wisconsin it is our general expectation that storm water infrastructure will become more extensive and complex, and we therefore believe efforts to promote awareness and improved management capabilities are necessary. We also believe, however, that better management is something that can realistically be attained and is to be expected of infrastructure owners, some of which already manage complex water and wastewater systems.

Based on the minutes of the August 28th meeting, there were general water quality concerns raised by a few members regarding the plan amendment, but there were also several non-water quality concerns that were mentioned by Commission members as a basis for denial. Specifically, it was mentioned that the proposal did not have the support of the Town of Mazomanie and the proposal did not comply with three goals of the Dane County Land Use and Transportation plan (e.g. compact mixed-use neighborhoods, not adjacent to existing urban areas). Many of these factors raised by the Commission members are important land use issues and the CARPC should make recommendations to communities to address them, however, these issues are not a basis for denial of an amendment to a water quality management plan.

The Department acknowledges there is language in ch. NR 121 that refers to the link between land use and water quality, and the general public interest. We interpret this language as recognizing that land use planning and water quality planning need to be integrated in a planning process. Also, as mentioned in s. NR 121.05, plans can discuss the social and economic impacts of carrying out the water quality goals identified in the plan, but the basis for decisions must center on water quality issues.

We understand that some of the basis for concern with the amendment relates to the long-term cumulative effects that may result from continued piece-meal approval of urban expansion through out Dane County. We appreciate the Commission's resolve to consider this comprehensive and difficult issue, but we believe the means to address this would start with pursuing special studies. The CARPC staff analysis contained a recommendation to initiate a special study of the portion of the Black Earth Creek watershed within the Town and Village of Mazomanie and the Department supports this recommendation. In a previous amendment approval, a recommendation for a special study of the Upper Black Earth Creek Watershed was endorsed. We would expect that the results from special studies of this sort, perhaps coupled with the envisioned "Future Urban Development Area" (FUDA) process, would provide a basis for addressing this question and incorporating appropriate measures into local land use plans. Such a process might also lead to recommendations for adopting different criteria for identifying "Environmentally Sensitive Areas", thus providing a greater assurance of protection for land that may be viewed as critical for providing long-term protection of water resources.

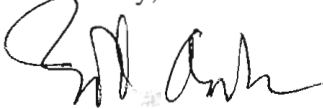
In reconsidering the Mazomanie amendment request, the Commission should focus on water quality impacts as the primary basis for a decision, and should consider the guidance and direction in this letter, the supplemental comments from Mazomanie (provided in their letters to the Department), as well as

other public comments that we have received since Mazomanie's request for amendment approval was submitted to the Department¹. We encourage you to work further with Mazomanie to identify appropriate mitigation measures.

It is our sincere hope that the Commissioners do not view this letter as somehow diminishing the importance of CARPC. We strongly believe that CARPC plays a necessary and critical role in shaping the future of Dane County. We are relying on CARPC to provide land use and water quality resource information and analysis, and a strong direction for local planning efforts. As a Regional Planning Agency, CARPC also has an important advisory function, beyond the implementation of NR 121. Of course, all of this must be accomplished in partnership with the local municipal entities identified as the "Designated Management Agencies" in the Dane County Water Quality Plan. These are the entities with primary plan implementation responsibility. We believe most municipalities are willing and capable partners in this effort and we look forward to continued successful collaborative planning in Dane County.

If CARPC staff has any questions, they can contact Tom Gilbert at 267-7628.

Sincerely,



Todd Ambs, Administrator
Division of Water

cc:

Kamran Mesbah, Deputy Director, CARPC
Scott Stokes, President; Village of Mazomanie
Sue Dietzen, Clerk; Village of Mazomanie
Ron Adler, Chair; Town of Mazomanie
Maria Van Cleve, Clerk; Town of Mazomanie
John St. Peter, Edgerton, St. Peter, Petak & Rosenfeldt
Timothy Fenner, Axley Brynelson
Carl Sinderbrand, Axley Brynelson
Andy Morton – WDNR - SCR
Tom Gilbert – WDNR - WT/3
Robin Nyffeler- LS/8

¹ Department staff will forward these letters to CARPC staff in a subsequent mailing.