

Rick Manthe

222 West Washington Avenue, Suite 900
P.O. Box 1784
Madison, WI 53701-1784
RManthe@staffordlaw.com
608.259.2684

October 17, 2022

VIA EMAIL

Tim.Asplund@wisconsin.gov

Tim Asplund
Natural Resources Program Manager
WI Department of Natural Resources
P.O. Box 7921
Madison, WI 53707-7921

Re: Town of Washington's Support for MPO Decision Denying Eau Claire
SSA Amendment

Dear Mr. Asplund:

The Town of Washington provides this written comment in support of the West Central Wisconsin Regional Planning Commission ("MPO") decision to deny the City of Eau Claire's request to amend its sewer service area. The MPO made the correct decision, and the DNR should adopt it.

The MPO decision was based on the plan approved by the member communities and the DNR. Wis. Admin. Code NR § 121.04(2)(c)5. requires that a water quality plan have an amendment process. Both DNR and the MPO approved the SSA amendment process applicable to the City of Eau Claire's request, meaning that process controls SSA amendments. The City's requested amendment did not comply with the SSA Plan. Consequently, DNR should uphold the MPO decision and also deny the SSA amendment.

In the summer of 2022, in conjunction with an annexation petition, the City submitted an application to amend its SSA. The Town believes the annexation is invalid for failing to comply with mandatory statutory requirements governing annexations. Nonetheless, the City proceeded with an SSA land swap, where area in the Town of Washington would be added to the SSA,

1103220944

Madison Office

222 West Washington Avenue 608.256.0226
P.O. Box 1784 888.655.4752
Madison, Wisconsin Fax 608.259.2600
53701-1784 www.staffordlaw.com

Milwaukee Office

1200 North Mayfair Road 414.982.2850
Suite 430 888.655.4752
Milwaukee, Wisconsin Fax 414.982.2889
53226-3282 www.staffordlaw.com

and removing area from the Town of Brunswick. The area proposed by the City in the SSA amendment application is approximately 2.2 miles from the City's border. Any residential development that occurs will require installation of utilities a significant distance from the City's current boundary.

All Eau Claire SSA amendments must comply with the goals and policies of the Chippewa Falls/Eau Claire Urban Sewer Service Area Plan-2025 ("Plan"). Plan at 103-104. The Plan makes clear that "using the words 'will' or 'shall' are mandatory and regulatory aspects of the *Chippewa-Eau Claire Urban Sewer Service Plan*." Plan at 82. Policy 1.1.9, in turn, requires that "Proposed plan amendments ... ***shall*** not create a void within the service area." Plan at 83 (emphasis added). The City chose to remove land from the SSA that would create a void within the SSA area. It therefore violated this mandatory and rudimentary policy. It could have easily selected a different donor area, but chose to create a void. That alone justifies the MPO's decision, and the DNR should affirm it.

The Plan also requires that "[s]ewer extensions that reflect the contiguous and compact pattern of development should receive priority over extensions that will contribute to urban sprawl." *Id.* at 82. This amendment is a prime example of urban sprawl. Residential development would occur miles from the City's border. Lowes Creek Park and farmland would separate the area from the City. A residential development 2.2 miles away from the City is not a compact pattern of development. Moreover, the proposed developer of the area has not even specified what density of development will occur, or the intended uses. Thus, the City's density arguments are irrelevant because there is no actual support for their contentions.

The Plan also requires that "[f]uture residential development should occur adjacent to existing development to contain costs of public service provisions, and reflect compact and orderly development." Plan at 83. This amendment would be the antithesis of compact and orderly development. The City will need to extend miles of infrastructure just to reach the area. There are no nearby developments within the City, as the area is over two miles from the City's border. A nearby residential subdivision already has private onsite water systems and will not hook up to City utilities.

Finally, the Plan provides that "the Sewer Service Area Plan (SSA Plan) and boundary should not be used to promote nor hinder annexation petitions...." *Id.* The City only sought an SSA amendment because the City is attempting to annex the territory. If the City truly felt the need to include the territory in its SSA, it would have made the request long ago. Instead, the request only came after it received an annexation petition. The SSA amendment and annexation petition are inextricably linked. There is no doubt the City is using the SSA amendment process to promote annexation.

November 3, 2022

Page 3

These policies cannot be ignored. The policies were important enough to the MPO member communities to specifically incorporate them for SSA amendments. The DNR specifically approved implementing the MPO's SSA plan. Therefore, the City must be required to comply with the policies chosen by the member communities. The MPO determined the City's application did not, and the DNR should affirm the MPO decision.

Reversing the MPO decision would have large—and irreversible—ramifications. SSA plans help to guide decision-makers. Here, the MPO applied the facts to its policies and found the application deficient. Reversing that decision would undermine the entire purpose of SSA plans: to guide decision-making. SSA plans and MPOs themselves would become meaningless, as the standards they create and apply could be overruled. It would also remove any incentive towns have to work with cities and villages on regional planning efforts, as their adopted policies could be ignored by incorporated municipalities. These factors all favor adopting the MPO decision.

The Town of Washington appreciates the opportunity to provide comments in favor of the MPO decision. Please feel free to contact me if you have any questions or need additional information.

Sincerely,

STAFFORD ROSENBAUM LLP

A handwritten signature in black ink, appearing to read "Rick Manthe", with a long horizontal flourish extending to the right.

Rick Manthe

RAM:mai

cc: