
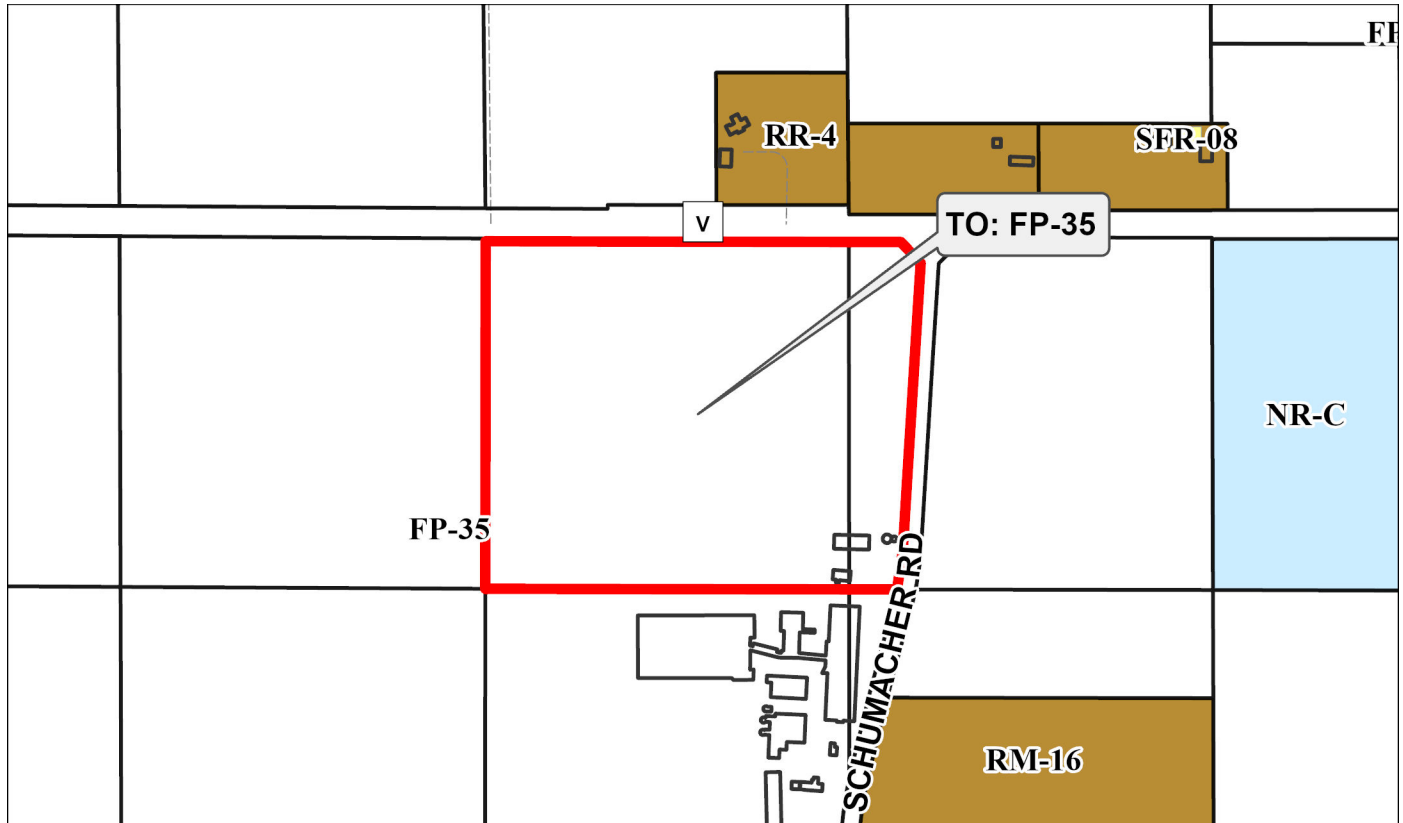


<b>Staff Report</b>    <b>Zoning &amp; Land Regulation Committee</b>	<u>Public Hearing:</u> <b>June 18, 2024</b> <b>Report updated for the July 9, 2024 ZLR meeting</b>		<b>Petition 12058</b>
	<u>Zoning Amendment Requested:</u> <b>FP-35 Farmland Preservation District TO FP-35 Farmland Preservation District</b>		<u>Town, Section:</u> <b>VIENNA, Section 21</b>
	<u>Size:</u> <b>46.9 Acres</b>	<u>Survey Required:</u> <b>No</b>	<u>Applicant:</u> <b>MAIER FARM REAL ESTATE LLC</b>
	<u>Reason for the request:</u> <b>Rezone out of wetland status</b>		<u>Address:</u> <b>7119 SCHUMACHER RD</b>



**DESCRIPTION:** Patrick Maier of Maier Farm Real Estate LLC is requesting that approximately 47 acres of land be removed from the Dane County Wetland Inventory Maps in an attempt to correct a wetland zoning violation. On February 20, 2024, the Dane County Zoning Division conducted an inspection on the property and found that drain tile was recently installed in a mapped wetland area. In addition, a cistern and pumping system was installed to pump the wetland water to the other side of Schumacher Road. See attached notice of non-compliance letter date March 6, 2024.

The landowner explained that they were only maintaining the existing drain tile system, however, no evidence was produced showing that the property ever contained a drain tile system. On March 26, 2024, a notice of violation letter was sent to Patrick Maier giving formal notice of the wetland violation along with corrective action. Possible corrective actions are to either have the property removed from the wetland inventory maps (rezone wetland status) or the physical removal of the drain tile and pumping system on the property.

**OBSERVATIONS and RESOURCE PROTECTION:** The property has historically been cultivated in low water years. Historic aerial photos show that in high water years, the wetlands return due to the presence of surface water. This property contains mapped wetlands which have been delineated to include additional lands. The wetlands are beyond 300 feet from any navigable waterway and are therefore inland-wetlands. Inland wetlands are regulated under the statutory authority of the Dane County Lakes and Watershed Commission. Cultivation of crops is a permitted use within wetlands.



*Above: Representative "low water" years show entire property in agricultural production. 1937 (left) and 2006.*



*Above: Representative "high water" years show wetland signatures and surface water within the property. Top: 1968 and 1994, Bottom: 2010 and 2022.*

In 2023, Maier Farm Real Estate LLC acquired this property which is adjacent to the Maier family farm. In early 2024, drain tiles were installed within the delineated wetland on the property. The design of the tiling system drains the wetlands to the low point of the site adjacent to Schumacher Rd where it is pumped to a culvert under the road and discharges into a Dane County and U.S. Fish and Wildlife area.

Under county wetland regulations, tiling wetland is limited to the maintenance and repair of existing agricultural drainage systems only to maintain the existing agricultural use. The drainage system installed (including the tiling and pump) is a new system and therefore a prohibited use within a wetland. The applicant is proposing to rezone out of wetland as a corrective measure and to be allowed to drain the wetland for the purpose of farming additional cropland. Rezoning lands “out of wetland” requires the proposal to meet the requirements in Chapter 11 ordinance, DCCO 11.10(2):

*(2) A wetland, or a portion thereof, in the shoreland-wetland or inland-wetland district shall not be rezoned if the proposed rezoning may result in a significant adverse impact upon any of the following:*

- (a) Storm and flood water storage capacity;*
- (b) Maintenance of dry season stream flow, the discharge of groundwater to a wetland, the recharge of groundwater from a wetland to another area, or the flow of groundwater through a wetland;*
- (c) Filtering or storage of sediments, nutrients, heavy metals or organic compounds that would otherwise drain into navigable waters;*
- (d) Shoreline protection against soil erosion;*
- (e) Fish spawning, breeding, nursery or feeding grounds;*
- (f) Wildlife habitat; or*
- (g) Areas of special recreational, scenic or scientific interest, including scarce wetland types.*

The Wisconsin Department of Natural Resources has issued a “Notice of Non-compliance” to the applicant for locating the pump within a wetland. WDNR was also contacted for comments on the rezone proposal. DNR staff commented that a restoration plan was submitted and approved by the DNR to address compliance with State wetland regulations. However, they noted the County’s Chapter 11 requirements still apply as a separate matter. The restoration plan requires relocating the pump to an upland area, however will still result in the tiled wetlands being drained.

**COMPREHENSIVE PLAN:** The property is within the Farmland Preservation Area under the *Town of Vienna/ Dane County Comprehensive Plan*. Most wetland policies in the Town Plan discuss maintaining existing wetlands and directing new development away from delineated wetlands and floodplains. Filling or draining is not expressly prohibited in the Town of Vienna Plan. For questions about the town plan, contact Senior Planner Curt Kodl at (608) 266-4183 or [kodl.curt@danecounty.gov](mailto:kodl.curt@danecounty.gov).

The County comprehensive plan establishes a natural resource goal to “Preserve, restore and sustain Dane County natural communities and resources, including grasslands, wetlands, woodlands and soils, to protect their benefits for: economic land use; wildlife habitat; erosion control; preservation of natural beauty; groundwater recharge; water quality protection; flood prevention, and; ecosystem health.” The Plan included a land use goal to generally “Protect natural areas, including wetlands, wildlife habitats, lakes, woodland, open spaces and groundwater resources.”

**TOWN ACTION:** As recommended by the Town Plan Commission the Town of Vienna Board recommended approval of the petition at their May 20<sup>th</sup> meeting.

**STAFF RECOMMENDATION:** Staff continues to recommend denial of the petition following additional information provided by the applicant during the June 18th public hearing. The proposal fails to meet the standards required in Chapter 11 and undermines the purpose and intent of inland-wetland protections established to meet the goals of the County Comprehensive Plan.

The applicant downplays the significance of the wetland on the Maier property. While historic aerial photos show cultivated land, these images don't capture the full ecological value of the wetland. Wetlands perform critical tasks beyond just holding surface water during wet seasons, filtering pollutants, controlling floods, providing habitat for diverse species, and replenishing groundwater. These functions may not be readily apparent but are crucial for a healthy environment.

The NRCS "capable of being cropped" classification doesn't negate the wetland designation. It simply acknowledges historic drainage efforts. Restoring proper wetland function could improve long-term agricultural sustainability. Exemptions from wetland regulations that exist in Federal and State law are not intended to supersede County regulations, and actually reflect the importance of the last line of protections for environmentally sensitive areas.

Increased precipitation due to climate change highlights the importance of wetlands. They act as natural sponges, absorbing excess water and mitigating flood risks. Protecting wetlands can help Dane County adapt to a changing climate. Wetlands are irreplaceable resources. While some farmlands may experience temporary flooding, removing wetland protections for these low-lying areas will snowball and lead to significant wetland loss. This will have long-term consequences for water quality, flood control, and biodiversity.

A comprehensive environmental study of upstream and downstream conditions is necessary to fully understand this wetland's functions and potential impacts of this rezoning request. The applicant has not provided such a study. Wetland zoning allows agriculture and wetland protection to coexist without removing protections from this property.

#### Reason for Denial:

1. The applicant provided very little evidence regarding meeting the standards for removing wetlands from the inventory maps. The property can be reasonably used for cropping in low water years without an agricultural drainage system.
2. The property is currently in violation due to the installation of a drain tile system.
3. The wetlands on the property filter stormwater runoff from the Maier Farm cattle barn, located south of the property.
4. The removal conflicts with many environmental policies of the Dane County Comprehensive Plan and Town of Vienna Comprehensive Plan.

Please contact Hans Hilbert at (608) 266-4993 or [hilbert.hans@danecounty.gov](mailto:hilbert.hans@danecounty.gov) if you have questions about this petition or staff report.