



Laura M. Hicklin, Director
Jamie Kuhn, Dane County Executive

Administration • Land Conservation • Parks • Water Resource Engineering • Watersheds & Ecosystem Services

July 2, 2024

Supervisor Michelle Doolan, Chair
Members of the Zoning & Land Regulation Committee

RE: Rezoning Application of Maier Farms Real Estate LLC
[Rezone Petition #12058](#)

Dear Chair Doolan and Supervisors Bollig, Kroning, Postler, and Ritt,

Dane County is the landowner downstream from the property subject to rezone petition #12058. The county property is under the jurisdiction of the Dane County Park Commission and is managed by Dane County Parks, a division of the Land & Water Resources Department. The county property was purchased in 2019 for flood water storage, to enhance wetland functions, including wildlife habitat and groundwater protection, and for public recreation.

In addition to managing County-ownership of the downstream property, the Land & Water Resources Department has responsibilities for the administration of Chapter 11: Shoreland, Shoreland-Wetland and Inland-Wetland Regulations, Chapter 13: Minimum Standards for Water Quality, and Chapter 14: Erosion Control & Stormwater Management, Dane County Code of Ordinances.

As such, I would like to offer the following points in consideration of denial of Rezone Petition #12058:

- Per the staff report, tiling a wetland is limited to the maintenance and repair of existing agricultural drainage systems to maintain the existing agricultural use. The standard to establish the replacement of an existing tile must include records of the system that is being replaced, records of the proposed replacement tile, and as-built records of the replaced system. Examples of records needed to make this determination would include maps showing the location, size, type, depth, and outlet of the tile.
- Evidence that tile existed on the property at some point in history does nothing to show that the system recently installed by Maier Farms Real Estate LLC, in violation of the existing wetland zoning, matched the original system. In fact, the photos of clay tile shards are a strong indication that the original tile system was drastically different in size, scale, and scope. It is also very unlikely that the original system included a pump.
- The USDA Natural Resource Conservation Service (NRCS) determination of the property is not relevant to county ordinances. NRCS determinations are made to establish farm eligibility for USDA Farm Bill programs. There are no site inspections or authority for a NRCS determination to supersede Dane County's local control and authority.

- The standard to amend a shoreland-wetland zoning district has not been met under Dane County Ordinance Section 11.10(2):
 - *Adverse impact on storm and flood water storage capacity:* The fact that the property has historically been cropped does not mean that the property does not also serve a critical function of storm and flood water storage. Storm and flood water storage capacity will not only be lost on the Maier Farms Real Estate LLC property, but also on the county property. The additional water from the pumped discharge will occupy flood storage capacity, reducing its use during flood events on the county property.
 - *Adverse impact on the maintenance of dry season stream flow, or 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:* This soil on the Maier Farms Real Estate LLC property is documented as a Sable silty clay loam soil which is identified as a poorly drained soil with depth to water table at 15 inches. As such, the tile system is likely drawing both surface and groundwater, leading to the depletion of the ground water supply and the loss of groundwater recharge.
 - *Adverse impact on filtering or storage of sediments, nutrients, heavy metals or organic compounds that would otherwise drain into navigable waters:* The installation of the new tile system means that nutrients and pollutants that would otherwise flow to the existing wetland on the property, where they could be trapped and filtered (an essential function of wetlands), will result in the rapid transport of these undesirable nutrients and pollutants to the county property and beyond. Drain tile is a significant factor in the loss of wetlands in the United States and has severe environmental consequences¹. Drain tile contributes significantly to excess loads of nitrate and phosphorus in waterways². There is no federal regulation of drain tile and the WI DNR has indicated challenges in enforcing drain tile standards statewide. While surface runoff of water that contains sediment and nutrients is undesirable, nutrient loading from drain tile is more damaging and more difficult to deal with. Phosphorus entering our watersheds from drain tile is dissolved and there are no tools or practices to address dissolved phosphorus.
 - *Adverse impact on fish spawning, breeding, nursery or feeding grounds:* The downstream county property along with other downstream properties include pools of open water, which will be negatively impacted from the nutrient and pollutant loading and therefore have an impact on fish spawning, breeding, nursery and feeding grounds.
- As noted in the June 17th letter from the applicant's attorney, the property to the south of the Maier Farms Real Estate LLC property is also owned by the Maier family as the "family farm" (the property ownership is DD Acres LLC and will be referred to as the "Maier Home Farm"). The Maier Home Farm is currently being investigated to determine potential violations of Chapters 11, 14, and 74 of the Dane County Code of Ordinances. This is relevant for two reasons: (1) it

¹ Mazur, J. (2024) "We should have a sense of urgency: Drainage tile drives nutrient pollution" *Columbia Missourian*. Available at: <https://thelensnola.org/2024/06/18/drainage-tile-drives-nutrient-pollution/>

² *ibid*

potentially demonstrates a pattern of ordinance violations and (2) there is not an approved stormwater management plan on the Maier Home Farm property, which is negatively impacting Maier Farms Real Estate LLC property. A stormwater basin on the Maier Home Farm property improperly collects manure laden runoff that then discharges to the wetland on the Maier Farms Real Estate LLC property. The discharge of manure further compounds all of the issues identified above and the property is being investigated for protentional violation of Chapter 49: Agricultural Performance Standards and Manure Management, Dane County Code of Ordinances.

"Exhibit A" is attached to orient the committee to the various properties and to illustrate the concerns identified herein.

Thank you for your consideration of the recommendation to deny rezone petition #12058.

Sincerely,

A handwritten signature in black ink, appearing to read "Laura Hicklin". The signature is fluid and cursive, with the first name "Laura" and last name "Hicklin" clearly distinguishable.

Laura Hicklin

