

VIA E-MAIL & CERTIFIED MAIL

July 19, 2024

Roger Lane
Dane County Zoning Administrator
Dane County Planning & Development
210 Martin Luther King Jr. Blvd.
Room 116, City-County Bldg.
Madison, WI 53703-3342

Hans Hilbert
Assistant Dane County Zoning Administrator
Dane County Planning & Development
210 Martin Luther King Jr. Blvd.
Room 116, City-County Bldg.
Madison, WI 53703-3342

RE: Notice of Appeal

Dear Mr. Lane and Mr. Hilbert:

Please be advised that Axley Brynelson, LLP represents Maier Farms Real Estate LLC (“Maier”). On March 20, 2024, Assistant Zoning Administrator Hans Hilbert issued “wetland use violation” to Maier. A copy of the violation is letter is enclosed.

The violation stated one of Maier’s “options for compliance” included an application to rezone the tiled land out of the wetland zoning district. Based on this advisement, Maier filed an application to rezone its property on April 16, 2024. The County Board voted to deny Maier’s rezoning application at its meeting held on July 18, 2024.

Maier now appeals to the Board of Adjustment the Zoning Administrator’s determination that the installation of drain tile and a pump on its property violates Dane County Code of Ordinances (DCCO) Section 11.07(2)(c). The Zoning Administrator’s determination fails to account for the fact that maintenance and repair of an existing drainage system on agricultural property is a permitted use under DCCO Section 11.07 and does not require a shoreland zoning permit. The use in which Maier engaged constituted maintenance and repair of an existing drainage system on

agricultural property. Maier is aggrieved by the Zoning Administrator's decision because it prevents Maier from fully utilizing its property for permitted agricultural uses.

Enclosed (in the letter addressed to Mr. Lane) is the \$500.00 filing fee for this appeal.

This appeal is timely because the appeal period was stayed during the pendency of Maier's rezoning application.

Please do not hesitate to contact me to further discuss this matter.

Sincerely,

AXLEY BRYNELSON, LLP



Christopher T. Nelson
CTN: eel

cc. Patrick Maier, Maier Farms Real Estate LLC, *Via E-mail*

Enclosures



Dane County Planning & Development Zoning Division

March 20, 2024

MAIER FARM REAL ESTATE LLC
7085 SCHUMACHER RD
WAUNAKEE WI 53597

RE: Wetland Use Violation

Dear Mr. Maier,

This letter serves as a determination by Dane County Zoning that the installation of drain tile and pump within a delineated wetland on your property does not meet the criteria of a permitted wetland use under Dane County Code of Ordinances (DCCO) Section 11.07(2)(c) and is therefore prohibited under 11.09. The use described in 11.07(2)(c) allows the maintenance and repair of existing agricultural drainage systems such as existing ditches and drain tiling. Maintenance and repair within this context is also limited to ditching, tiling, dredging, excavating or filling and does not encompass the installation of a pump or other equipment or structures.

Your justification for the project as maintenance and repair centered on the property's designation as 'prior converted cropland' by the NRCS, implying the existence of a historical agricultural drainage system. However, your arguments raise concerns:

- The assumption of a pre-existing system solely based on the land's classification is insufficient.
- Lack of knowledge about the system due to past ownership does not excuse unauthorized wetland modification.
- No evidence of existing ditches or drain tile was presented.

While increased and more frequent rain events may have impacted historical drainage patterns, installing entirely new tiling and a pump goes beyond mere repair or maintenance of a pre-existing system as defined under 11.07(2)(c). Repair and maintenance are limited to activities that uphold the existing level of drainage for continued agricultural use, not the creation of new systems to maintain historical practices. As a result, your actions constitute a wetland zoning violation for a prohibited use in a wetland under DCCO 11.09.

Your options for compliance with Dane County wetland zoning regulations are:

1. Eliminate the prohibited wetland use by removing the drain tiling and pump from the wetland.
2. Effectively rezone the tiled land out of the wetland zoning district by following the procedure established in [DCCO 11.10](#).

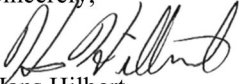
Removal of the drain tile and pump will require an erosion control permit from Dane County Land and Water Resources for any ground disturbing activity within or within 75 feet of the wetland. In addition, all corrective actions will need to be part of a restoration plan approved by the Wisconsin Department of Natural Resources as requested in their Notice of Non-Compliance dated February 12, 2024.

Please let me know if you need any assistance in developing a plan of action leading to compliance or would like more information on the requirements of rezoning land out of wetland.

If steps towards compliance are not pursued, further enforcement actions will commence including citations and a summons and complaint filed in Dane County Circuit Court.

Any person aggrieved by any decision of the zoning administrator or other administrative officer, may appeal that decision to the Dane County Board of Adjustment by following the procedures in DCCO 10.101(9) within 30 days of the determination date.

Sincerely,



Hans Hilbert
Assistant Zoning Administrator
County of Dane
608-266-4993
hilbert.hans@countyofdane.com