

*VIA E-MAIL*

August 16, 2024

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

RE: Submission to the Board of Adjustment regarding Maier Farms Real Estate LLC's appeal of a decision of the Zoning Administrator

Dear Mr. Hilbert:

This letter constitutes Maier Farms Real Estate LLC's ("Maier") submission to the Board of Adjustment (the "Board") regarding its request that the Board consider its appeal of the Zoning Administrator's decision that Maier had committed a "wetland use violation" by replacing existing drain tile on its property, which is identified by Dane County Parcel Id Nos. 064/0909-212-8500-7 and 064/0909-212-8140-0. A copy of the Zoning Administrator's violation letter is enclosed with this letter.

The violation letter instructs Maier that it has two options for compliance with Dane County wetland zoning regulations: "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."

Upon receipt of the violation letter, dated March 20, 2024, Maier began work on its rezoning application, which it submitted to Dane County on April 16, 2024. A copy of Maier's rezoning application is also enclosed with this letter. If the Dane County Board of Supervisors granted Maier's rezoning application, that would have resolved all alleged compliance issues regarding Maier's replacement of drain tile on its property, which is why Maier proceeded in this fashion. Maier's application for rezoning was not a statement that Maier agreed with the Zoning Administrator's determination that the replacement drain tile on its property constituted a violation of the County's wetland zoning regulations, but was rather an earnest attempt to resolve all wetland zoning issues raised by the Zoning Administrator.

Further, Maier filed a rezoning application specifically because the Zoning Administrator's letter identified it as an option for compliance. Maier filed its rezoning application within 30 days of receipt of the violation letter.

Unfortunately, the Dane County Board of Supervisors denied Maier's rezoning application on July 18, 2024. Immediately thereafter, on July 19, 2024, Maier filed its appeal of the Zoning Administrator's decision. Maier believes its appeal is timely because the 30-day appeal period articulated Dane County Board of Adjustment Rules and Procedures (4) was stayed during the pendency of Maier's timely rezoning application.

Nevertheless, if the Board does not consider Maier's appeal application to be timely, Maier asks that the Board suspend its rules in accordance with Board of Adjustment Rules and Procedures (8) and consider Maier's appeal. Maier did not delay in acting on the Zoning Administrator's violation letter of March 20, 2024. It quickly filed an application to rezone its property upon receipt of the letter, as instructed therein. Upon the Board of Supervisors denial of its rezoning application, Maier immediately appealed the Zoning Administrator's decision of March 20, 2024. Dane County has suffered no prejudice in this process, and the Board, by suspending its rules and addressing Maier's appeal, may avoid the need for litigation on issues involving the application of the Ch. 11 of the Dane County Code of Ordinances to Maier's property and replacement of drain tile on it. It benefits all parties to fully address whether a violation exists at this stage, rather than through a costly and unnecessary enforcement action.

Please do not hesitate to contact me to further discuss these matters.

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](#).

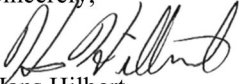
Removal of the drain tile and pump will require an erosion control permit from Dane County Land and Water Resources for any ground disturbing activity within or within 75 feet of the wetland. In addition, all corrective actions will need to be part of a restoration plan approved by the Wisconsin Department 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



**Dane County**  
**Department of Planning and Development**  
 Zoning Division  
 Room 116, City-County Building  
 210 Martin Luther King Jr. Blvd.  
 Madison, Wisconsin 53703  
 (608) 266-4266

Application Fees	
General:	\$395
Farmland Preservation:	\$495
Commercial:	\$545
<ul style="list-style-type: none"> <li>• PERMIT FEES DOUBLE FOR VIOLATIONS.</li> <li>• ADDITIONAL FEES MAY APPLY. CONTACT DANE COUNTY ZONING AT 608-266-4266 FOR MORE INFORMATION.</li> </ul>	

## REZONE APPLICATION

APPLICANT INFORMATION			
Property Owner Name:	Maier Farm Real Estate LLC	Agent Name:	Mitch Olson, Axley Brynelson, LLP
Address (Number & Street):	7055 Schumacher Rd.	Address (Number & Street):	PO Box 1767
Address (City, State, Zip):	Waunakee, WI 53597	Address (City, State, Zip):	Madison, WI 53701-1767
Email Address:	maierfarms.patrick@hotmail.com	Email Address:	molson@axley.com
Phone#:		Phone#:	(608) 283-6730

PROPERTY INFORMATION			
Township:	T09N, R09E	Parcel Number(s):	064/0909-212-8500-7; 064/0909-212-8140-0
Section:	21	Property Address or Location:	7119 Schumacher Rd., Waukakee, WI 53597

REZONE DESCRIPTION	
<p><b>Reason for the request.</b> In the space below, please provide a brief but detailed explanation of the rezoning request. Include both current and proposed land uses, number of parcels or lots to be created, and any other relevant information. For more significant development proposals, attach additional pages as needed.</p>	<p><b>Is this application being submitted to correct a violation?</b>            Yes <input type="checkbox"/> No <input checked="" type="checkbox"/></p>

See attached Rezone Description.

Existing Zoning District(s)	Proposed Zoning District(s)	Acres
From Wetland	Non Wetland (Farmland Preservation)	46.9

**Applications will not be accepted until the applicant has contacted the town and consulted with department staff to determine that all necessary information has been provided. Only complete applications will be accepted. All information from the checklist below must be included. Note that additional application submittal requirements apply for commercial development proposals, or as may be required by the Zoning Administrator.**

<input checked="" type="checkbox"/> Scaled drawing of proposed property boundaries	<input checked="" type="checkbox"/> Legal description of zoning boundaries	<input type="checkbox"/> Information for commercial development (if applicable)	<input checked="" type="checkbox"/> Pre-application consultation with town and department staff	<input checked="" type="checkbox"/> Application fee ( <b>non-refundable</b> ), payable to the Dane County Treasurer
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I certify by my signature that all information provided with this application is true and correct to the best of my knowledge and understand that submittal of false or incorrect information may be grounds for denial. Permission is hereby granted for Department staff to access the property if necessary to collect information as part of the review of this application. Any agent signing below verifies that he/she has the consent of the owner to file the application.

Owner/Agent Signature

Date 04/16/24

### **Rezone Description**

Portions of Parcels 064/0909-212-8500-7 and 064/0909-212-8140-0 are located within the County Shoreland-Wetland zoning overlay, due to the presence of a wetland classified as E1Kf. The inventory designation of the wetland, which is shown on the attached scaled drawing of the property boundaries, indicates the wetland does not extend beyond Parcel No. 064/0909-212-8500-7; however, a wetland delineation that Applicant Maier Farm Real Estate LLC received from Heartland Ecological Group indicates the boundary extends into Parcel No. 064/0909-212-8140-0, terminating at Schumacher Rd. The wetland delineation also indicates the wetland is very shallow, with a depth of only one (1) foot. This wetland delineation is included with Applicant's rezoning application.

As noted by the State classification, the area has been farmed historically in years of low to normal precipitation. Accordingly, re-zoning the wetland designation on the Properties and removing them from the Shoreland-Wetland zoning overlay will not have an adverse effect on any of the factors in Wis. Adm. Code NR 115.04(2)(c)4. or County Ordinance Sec. 11.10(2). Applicant requests the County amend its Shoreland-Wetland zoning overlay map to remove Parcels 064/0909-212-8500-7 and 064/0909-212-8140-0 from the overlay.

### **Legal Description of Parcels to be Rezoned**

Applicant Maier Farm Real Estate LLC requests the County rezone Parcels 064/0909-212-8500-7 and 064/0909-212-8140-0 outside of the County Shoreland-Wetland zoning overlay, after which the sole zoning designation for the Parcels would be Farmland Preservation.

Parcel 064/0909-212-8500-7 is described as follows:

The Northwest  $\frac{1}{4}$  of the Northwest  $\frac{1}{4}$  of Section 21, in Township 9 North, Range 9 East, in the Town of Vienna, Dane County, Wisconsin.

Parcel 064/0909-212-8140-0 is described as follows:

That part of the Northeast  $\frac{1}{4}$  of the Northwest  $\frac{1}{4}$  of Section 21 lying West of the centerline of Schumacher Road, in Township 9 North, Range 9 East, in the Town of Vienna, Dane County, Wisconsin.

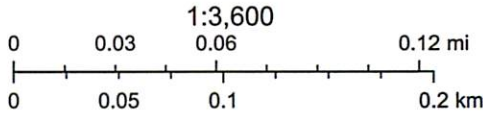
# Dane County Map



April 12, 2024

- Parcels
- Rural Zoning
- Farmland Preservation
- Rural Residential and Rural Mixed Use

- DNR Wetlands > 2ac - 75ft Buffer
- Wetland Class Points
- Excavated pond
- Wetland Class Areas
- Area to be Rezoned
- Wetland too small to delineate



Sources: Esri, Airbus DS, USGS, NGA, NASA, CGIAR, N Robinson, NCEAS, NLS, OS, NMA, Geodatastyrelsen, Rijkswaterstaat, GSA, Geoland, FEMA,



