

MINUTES

SEWRPC ADVISORY COMMITTEE ON REGIONAL WATER QUALITY MANAGEMENT PLAN UPDATE FOR THE GREATER MILWAUKEE WATERSHEDS

DATE: December 15, 2004
TIME: 1:30 p.m.
PLACE: City of Mequon City Hall
Upper Level Council Chambers
11333 N. Cedarburg Road
Mequon, Wisconsin

Committee Members Present

Daniel S. Schmidt, Chairman	Village of Kewaskum/SEWRPC Commissioner
Robert P. Biebel, Secretary	Southeastern Wisconsin Regional Planning Commission Staff
Julie A. Anderson	Racine County
Michael Ballweg	UW-Extension, Sheboygan County
John R. Behrens	Silver Lake Protection and Rehabilitation District
John M. Bennett	City of Franklin
Thomas J. Bunker	City of Racine Water and Wastewater Utility
Marsha B. Burzynski (for Charles J. Krohn)	Wisconsin Department of Natural Resources
David E. Carpenter	Dodge County
Shawn Graff	The Ozaukee Washington Land Trust, Inc.
Shannon K. Haydin	Sheboygan County
Gerald Hebard (for Patrick A. Murphy)	Natural Resources Conservation Service
Andrew A. Holschbach	Ozaukee County
William J. Hoppe	City of Mequon
William A. Kappel	City of Wauwatosa
Kristine M. Krause	We Energies
James Lubner	UW Sea Grant Institute
Daniel J. Lynch	Natural Resources Conservation Service
Jeffrey J. Mantes	City of Milwaukee
Charles S. Melching	Marquette University
Matthew Moroney	Metropolitan Builders Association
Cheryl Nenn	Friends of Milwaukee's Rivers
Jeffrey S. Nettesheim	Village of Menomonee Falls
Charles A. Peters	U.S. Geological Survey
Kevin L. Shafer	Milwaukee Metropolitan Sewerage District
Thomas A. Wiza	City of Cedarburg

Staff Members and Guests

Gary K. Korb	UW-Extension/SEWRPC
Christine Nuernberg	Mayor, City of Mequon
Ronald J. Printz	Southeastern Wisconsin Regional Planning Commission

WELCOME AND INTRODUCTIONS

Mr. Schmidt thanked the Advisory Committee members for attending this meeting. He indicated that roll call would be accomplished with a sign-in sheet circulated by Commission staff and he then asked each of the members and guests to introduce themselves.

APPROVAL OF MINUTES OF THE MEETING OF OCTOBER 12, 2004

Mr. Schmidt asked if there were any additions or revisions to be made to the minutes of the October 12, 2004, meeting of the Committee. There being no additions or revisions, the minutes were approved, on a motion by Mr. Bennett, seconded by Mr. Hoppe, and carried unanimously.

CONSIDERATION OF CHAPTER I, "INTRODUCTION AND BACKGROUND"

Mr. Schmidt then asked Mr. Biebel to review the preliminary draft of Chapter I, "Introduction and Background." Mr. Biebel indicated that he would highlight selected portions of the chapter and encouraged the Committee members to raise comments and questions on a page-by-page basis. He also reminded the Committee that major changes agreed upon by the Committee would be documented in the minutes of the meeting and would be reviewed by the Committee in that form.

Ms. Krause asked where the chapters to be reviewed fit into the process. Mr. Biebel used a display board to show the relationship of the chapters to the overall planning process.

[Secretary's Note: A page-size copy of the figure on the display board illustrating the planning step is attached hereto as Exhibit A.]

Mr. Shafer noted that the second word appearance of the word "update" in the first line on page 2 should be deleted. He also noted that the term "MMSD" should be used in lieu of "Milwaukee Metropolitan Sewerage District" in the second line on page 2 and going forward. Mr. Shafer also suggested that the term "WWTP" in the third full paragraph on page 2 be revised to "wastewater treatment plant." These changes were duly noted.

Mr. Bennett referred to the section of the chapter entitled "Study Area," and asked if the Lake Michigan shoreline behind the South Shore breakwater was included in the study area. Mr. Biebel indicated in the affirmative. Mr. Bennett noted the importance of that nearshore area and recommended that the text be revised to reference it.

[Secretary's Note: In order to clarify the study area along the Lake Michigan shoreline, the following sentences were added to the second paragraph under the heading "Study Area":

"The nearshore Lake Michigan area protected by the South Shore breakwater immediately south of the Milwaukee Outer Harbor is an important part of the study area forming an extension of the Milwaukee Harbor extending about 12,500 feet south along the Lake Michigan shoreline and partially protecting the South Shore Yacht Club, South Shore Park, and Bay View Park."]

At Mr. Lubner's suggestion, the term "tailwater" in the third full paragraph on page 2 was changed to "water level."

Mr. Bennett suggested, and it was agreed, that the term "update of the" be added ahead of the word "regional" and the word "update" following the word "plan" be deleted in the first line under the heading "Purpose and Objectives." The first sentence under this heading was also combined with the second paragraph to make one paragraph.

[Secretary's Note: At Mr. Shafer's suggestion, the following sentence was added to the last paragraph on page 4:

"The WDNR also permits large farm animal operations. However, these permits are not directly related to the regional water quality plan recommendations."]

There were a number of typographical and clarification items noted at the meeting or by copy of edited chapters provided after the meeting. These were duly noted. There was also a need to revise the paragraph on page 10 to clearly indicate, in summary the content of subsequent chapters.

[Secretary's Note: The paragraph on page 10 was revised to read as follows:

“SCHEME OF PRESENTATION

The findings and recommendations of the year 2020 regional water quality management plan update for the greater Milwaukee watersheds are documented in this report. Following this introductory chapter, Chapter II presents updated information regarding the demographic and economic base, the natural environment, and land use and other aspects of the man-made environment of the watersheds, including information that is essential to the planning process. Chapters III and IV present a summary of a technical report prepared as part of the planning program which includes more detail relating to existing and historic water quality and pollution sources in the watersheds involved. Chapter V describes the water quality simulation models and other important analytic methods employed in the planning process. Chapter VI summarizes the legal structures or regulations affecting the study area. Chapter VII presents the planning objectives and standards adopted for use in the planning program. Chapter VIII presents land use and related population, household, and employment levels anticipated for the study in the year 2020. Chapter IX presents a description and evaluation of alternative water quality management plans. Chapter X presents a recommended water quality management plan update designed to accommodate the year 2020 conditions. Chapter XI describes the actions which should be taken by the concerned units and agencies of government to facilitate implementation of the recommended plan. Chapter XII provides an overall summary of the major findings and recommendations of the planning study.”]

Mr. Holschbach noted the plan was to be completed by the end of 2006. He stated the importance of sound water quality condition data in making local decisions and asked if such data would be forthcoming. Mr. Biebel briefly reported on the planning program schedule and its reliance of water quality modeling of existing and alternative future conditions. He noted the availability of an extensive MMSD water quality data base in the MMSD planning area, but a lack of data in the upstream Milwaukee River and Lower Root River watersheds. He also reported on the USGS monitoring program which is nearing completion and designed to obtain water quality data for model calibration purposes in the Upper Milwaukee and Lower Root River watersheds. He reported that given the timeframe of the planning program elements, no further water quality data collection was warranted for plan preparation purposes. However, he noted that under the planning program, there may be an identification of the need for more data collection. In that case, the plan could recommend such actions and identify potential responsible agencies and funding sources. Mr. Graff noted that the citizen-based volunteer programs, as discussed at a previous meeting, could play a role in implementing such a plan recommendation.

There being no further discussion, a motion to approve the preliminary draft of Chapter I, “Introduction and Background,” as amended was made by Mr. Mantes, seconded by Mr. Holschbach, and carried unanimously by the Committee.

CONSIDERATION OF CHAPTER VII, “PLANNING OBJECTIVES, PRINCIPLES, AND STANDARDS”

Mr. Schmidt then asked Mr. Biebel to review the preliminary draft of Chapter VII, “Planning Objectives, Principles, and Standards,” and asked for comments on a page-by-page basis.

With regard to Item 5 on page 2, “Regulatory Wisconsin Department of Natural Resources (WDNR) Water Quality Standard, Criteria, and Designated Uses,” Mr. Bunker asked for further clarification of the term “anti-degradation policy.” He noted a need to carefully consider the use of that term, as it may give the public false impressions. A discussion ensued relating to this term. Mr. Melching noted that some degradation of water quality can occur routinely due to changes in land uses tributary to a surface water to incremental increases in loadings to sewage treatment plants. Mr. Biebel indicated he would consult with the WDNR staff to clarify the term “anti-degradation,” as the WDNR had drafted the text involved.

[Secretary’s Note: In response to Mr. Bunker’s concern, the term “anti-degradation” has been footnoted with the following note:

“In this context, the term “anti- degradation policy” is intended to mean the anti-degradation policy referred to in Section NR 102.05(1) of the *Wisconsin Administrative Code* and the associated implementation procedures set forth in Chapter NR 207 of the *Wisconsin Administrative Code*. That policy states that ‘No waters of the state shall be lowered in quality unless it has been affirmatively demonstrated to the department that such a change is justified as a result of necessary economic and social development, provided that no new or increased effluent interferes with or becomes injurious to any assigned uses made of or presently possible in such waters.’ In practice, this policy applies to formally proposed increases in existing discharges or to new discharges to the surface waters. As such, the policy does not typically apply to any changes in currently approved discharges due to incremental changes in land uses or point source connections which are anticipated in the current permitted levels of discharge.”]

With regard to “Land Use Objective No. 3” on page 5, Mr. Moroney suggested, and it was generally agreed, to replace the phrase “assure their economical provision” with the phrase “provide these systems in as economical a manner as practical.”

Mr. Melching referred to Maps VII-1 through VII-6 and Table VII-1 and asked if there were physical reasons for the lower water use classification for some streams. Mr. Biebel indicated that, in most cases, that was the case. He cited historic or current sewage treatment plant discharges, or channelization measures, as examples. Messrs. Melching and Moroney asked about evaluations of higher levels criteria. Mr. Biebel reported that in the case of certain stream segments, the potential to meet the criteria for a higher classification was proposed to be evaluated. He reported the stream reaches for which this applied were indicated in Table VII-1, with a second classification to be considered noted in column 3. Mr. Biebel noted that the auxiliary or higher use was being evaluated for purposes of assisting in future management and planning and was not intended to change the current regulatory framework. He noted that the basis for considering the higher use for selected reaches was covered by footnotes.

[Secretary’s Note: Based upon the discussion, the following sentence was added following the third full paragraph on page 26:

“The evaluations of alternative classifications are largely being done in response to changes in conditions since the last relevant *Administrative Code* section were promulgated.”]

There were further comments on Maps VII-1 through VII-7 and it was agreed that the final map legends would be larger. Ms. Nenn suggested, and it was agreed, that the recreation use category symbology would be eliminated as unnecessary. A footnote was added to Table VII-1 stating the recreational use category relationship to each of the fish and aquatic life categories noted in the table.

There were also further comments on Table VII-1 and it was agreed to place the abbreviation meanings on each page.

Mr. Moroney referred to “Outdoor Recreation and Open Space Preservation Objectives” Objective No. 1 on page 24. He indicted a concern that there was an implication that environmental corridors in private ownership would be made available for public uses, perhaps without property owner's agreement. Mr. Biebel indicated that that was not the intent and that ownership or other arrangements for public uses of privately owned lands was envisioned only in appropriate situations when there was agreement of the property owner. It was agreed to add the phrase “while respecting private property rights” at the end of the Outdoor Recreation and Open Space Preservation Objective No. 1.

With regard to Plan Structure and Monitoring Objectives No. 1, “Development of Economical and Efficient Programs” on page 25, Mr. Bunker noted there was a concern relating to the ability to determine and implement a cost-effective solution to a problem under certain regulatory constraints. He cited the example of an area with a sanitary sewer overflow, noting that if it were required to eliminate that overflow under all conditions in a relatively short timeframe, such a solution may be more costly that would be the case if there were time and leeway to find the most cost-effective solution which may be to remove sources of infiltration and inflow. He noted that such a solution would take time to implement and monitor, as well as possible refinement following monitoring.

Mr. Graff referred to the same objective and recommended changes to avoid the inference of that objective favoring a lost-cost, short-term solution, which may be more costly in the long-term. After some discussion, it was generally agreed to add the term “long-term” ahead of the word “capital” in that objective.

There were a number of minor wording and typographical changes suggested by Committee members both at and following the meeting. These changes were made accordingly.

There being no further discussion, a motion to approve preliminary draft Chapter VII, “Planning Objectives, Principles, and Standards,” as amended was made by Mr. Moroney, seconded by Ms. Anderson, and carried unanimously by the Committee.

CONSIDERATION OF APPENDIX VII-1, “OBJECTIVES, PRINCIPLES, AND STANDARDS”

At Mr. Schmidt’s request, Mr. Biebel then reviewed the draft of Appendix VII-1, Objectives, Principles, and Standards,” with the Committee. There were a substantial number of comments and suggestions regarding the appendix. In addition, other recommendations, mostly typographical, were received following the meeting. The comments and recommendations are summarized as follows:

Objective, Principle, and Standard	Comments and Recommendations
Appendix VII-1A, Land Use Development Objectives	
Objective No. 1	
Standard 1, Page 1	In text, replace the words “set aside” with “allocated”
	In table, utilize housing units per acre as the measure and utilize ranges of values
	In table, check the footnote reference for “suburban” and change to “c.” Check fonts for footnote reference to differentiate from lower order text
Standards. 2 and 3, Page 1	In text, replace the words “at least” with “a minimum of”
Standard 4, Page 2	Drop “d”
Objective No. 2	

Objective, Principle, and Standard	Comments and Recommendations
Standard 1b, Page 2	Add the words “given the technologies available at the time” to the end of this standard
Standards 2a through 2d, Pages 2 and 3	The standards are not practical given the current state of development
	Utilize buffer concepts
Standards 2e and 2f, Page 3	Streambanks should be preserved. Use buffer concepts
Standard 4a, Page 3	The term, “all wetlands” is too encompassing. Recognize mitigation concepts. Strike the word “urban” in the second line
Standard 4b, Page 3	Define “particularly important wetlands.” Use buffer concepts
Standard 5a, Page 4	Check to see if 10 percent is attainable. Consider the quality of woodlands in decision-making
Principle 8, Page 4	Drop the second set of words, “as they support advances”
Appendix VII-1B, Water Quality Objectives	
Objective No. 2	
Principle, Page 9	Strike the second to last sentence as duplicative
Standards 1 and 2, Page 9	Add the word “and” after the word “plant” in the first line of Standard 1. Change the map references to Maps VII-1 through VII-16
Standard 7, Page 9	Recognize the need to allow for bypassing under extreme unplanned for circumstances
Standard 8, Page 9	Intent of standard is not to preclude blending
Standard 10, Page 10	Change “landshaping” to “landscaping”
Objective No. 3	
Standard 7, Page 10	Rewrite to delete the word “no” and to allow for discharge consistent with standard achievement
Objective No. 4	
Principle, Page 11	Cover the problem of urban land fertilizer runoff, as well as agricultural fertilizers
Standard, Page 11	Change the reference to T-value to newer way of assessing acceptable soil erosion rates
Appendix VII-1C, Outdoor Recreation and Open Space Preservation Objectives	
Objective No. 1	
Principle B, Page 13	Define the term, “recreation corridor”
Standards, Page 13	Consider the need for passive recreational uses
Objective No. 2	
Standard, Page 14	The term “all” is too encompassing. There is a need to consider the need to protect property rights

Objective, Principle, and Standard	Comments and Recommendations
Standards B1 and B2, Page 15	The word “all” is too encompassing. Leave room for development that is in a logical area or path of development
Appendix VII-1D, Water Control Facility Development Objectives	
Objective No. 1	
Standard 1d, Page 19	Change the phrase, “100-year recurrence interval” to “1 percent probability of occurrence”
Appendix VII-1E, Plan Structure and Monitoring Objectives	
Objective No. 1	
Standard 1, Page 22	The standard to minimize cost can only be done if flexibility is provided to allow time to evaluate and test alternatives. For example, resolving a sewer overflow problem can often be done cost-effectively by implementing an infiltration and inflow removal program. This solution may take time to fully implement. If regulations require a short-term solution, storage may have to be built at a higher cost

[Secretary’s Note: Following the meeting, Mr. Moroney provided additional comments. These comments are attached as Exhibit B.]

Given the extent of the comments, it was agreed to provide a revised copy of Appendix VII-1 to the Committee for review.

[Secretary’s Note: Given that many of the comments provided related to principles and standards associated with land use objectives, those comments were communicated to the SEWRPC land use planners who are currently developing a new regional land use plan under the guidance of the Technical and Coordinating Committee on Regional Land Use Planning. Objectives, principles, and standards are currently being developed for use in the new regional land use plan. Thus, it is proposed to incorporate the revised land use-related principles and standards after they are developed under the regional land use planning program, with guidance being provided by the Advisory Committee for that planning program. That is expected to be completed by May 2005. At such time, the revised Appendix VII-1 will be provided to the Advisory Committee on the Regional Water Quality Management Plan Update for the Greater Milwaukee Watersheds.

In this regard, the Committee should understand that the basis for the 2020 regional water quality management plan update is the year 2020 regional land use plan. The land use principles and standards reviewed at the December 15, 2004, meeting were similar to those which were considered in development of the 2020 land use plan. However, given the concerns raised, it is proposed to revise the land use-related principles and standards incorporated for reference in the regional water quality management plan update to reflect both the Committee’s comments and the recommendations of the ongoing 2035 land use plan. This will provide for consistency going forward. The revised appendix will be reviewed at a future meeting in May or June 2005.]

REPORT ON WATER QUALITY MODELING ACTIVITIES SUPPORTING THE PLANNING PROGRAM

Mr. Schmidt indicated that, given the time of day, in order to honor the Committee's time commitment, Item 6 on the agenda would be held over until the next meeting.

DETERMINATION OF NEXT MEETING DATE AND LOCATION

The next meeting of the Advisory Committee was tentatively scheduled for February 22, 2005, at 1:30 p.m. at the Mequon City Hall in the upstairs Council Chambers.

[Secretary's Note: The date for the next meeting was subsequently changed to March 23, 2005, at 1:30 at the Mequon City Hall in the upstairs Council Chambers.]

ADJOURNMENT

The December 15, 2004, meeting of the Advisory Committee on the regional water quality management plan update was adjourned at 3:35 p.m. on a motion by Mr. Hoppe, seconded by Mr. Bennett, and carried unanimously by the Committee.

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#102651 V1 - RWQMP UPDATE MINUTES 12/15/04
RPB/pk
03/14/05

Regional Water Quality Management Plan Update and MMSD 2020 Facilities Plan

DRAFT

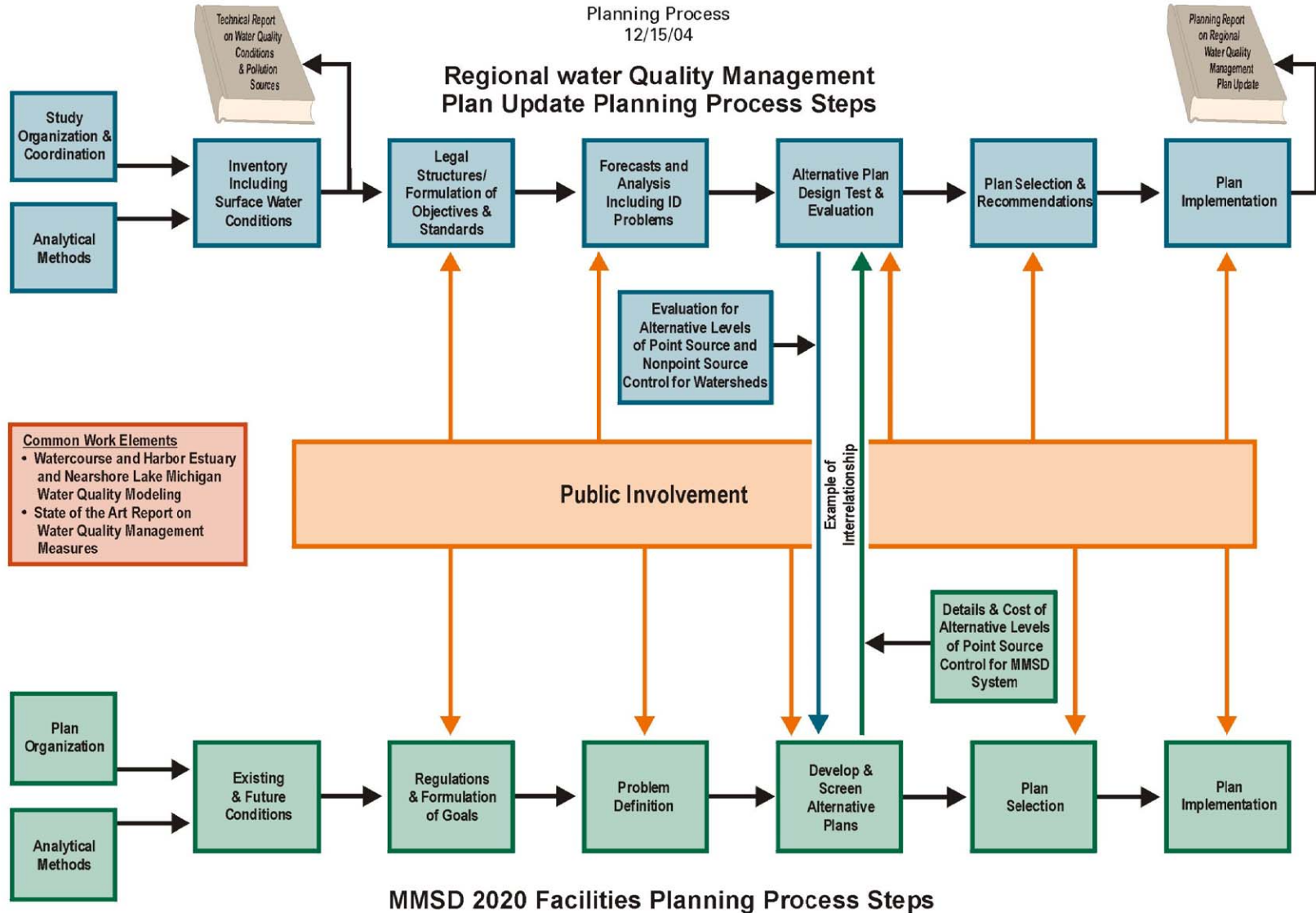


Exhibit A

Exhibit B

MEMO

TO: Bob Biebel, SEWRPC

FROM: Matt Moroney, MBA Executive Director

RE: Appendix VII-1A

DATE: December 21, 2004

My apologies for the delay in getting my comments to you. With our home show rapidly approaching, my time is pretty limited. Please consider the following brief comments:

Page 1

As for the minimum densities being recommended, please consider the following:

- The suburban standard of 1.67 acres per unit should be closer to 2.5 acres per unit. Higher densities in these areas that have municipal services should hopefully relieve development pressures in areas that are truly more rural. This standard, as proposed, will just fuel what we call "planned urban sprawl". The higher densities also allow for more efficient and cost effective delivery of services. With the tight tax climate, this consideration is often lost in the debate.
- In addition, it is our position that as the population ages that we will see a greater demand for higher densities that offer the benefits of lower maintenance and more affordability. Particularly, economic indicators are showing us that the ranch condominium market will be very strong in the coming years. The proposed densities will make these housing units unaffordable for the very people who will be demanding this type of housing choice. We are already seeing affordability issues facing our region.
- In addition, there should be a provision that recognizes quality development that seeks to minimize the impacts on the environment and surrounding land uses. If a Low Impact Development or Conservation subdivision design concept is utilized, then that project should be allowed to have higher densities. This gives an even stronger incentive to incorporate the best environmental practices. The density component has been missed in many conservation and LID ordinances that have been drafted to date. This is a disservice to the need to balance environmental protection and the demand for development that our region has experienced.

Page 2

As for unsewered residential development, I would like to add the following language to the end of that sentence – "*given the technologies available at the time*".

As for inland Lakes & Stream standards, the language suggested is not practical given the current existing land conditions surrounding most lakes. It would be better to incorporate buffer

standards clearly in the document that indicate the width of the buffer. The width of the buffer makes a big difference on the use of the land.

Page 3

As for the Wetlands standard, wetlands should be protected based on their functional value. In cases of poor functional value, mitigation should be incorporated as an alternative to avoidance. There should be no net loss of wetlands. Hopefully, with mitigation, the region will experience an improvement in functional values. In addition, standard B needs to refer to buffers and the recommended width of those buffers. A definition of a "particularly important wetland", based on functional value, would also be helpful. It would also seem to be a contradiction to allow certain types of agriculture next to these areas as well. This section should refer specifically to the functional value of the wetland and the buffer width required based on that value.

Page 4

As for Woodland standards, shouldn't we be protecting quality woodlands and basing the protections on certain classifications. Is the 10% goal even attainable?

In addition, what do you mean by protection? Is it the purchase of these properties or is it the placement of reasonable restrictions that do not diminish the use and value of the property to the owner? This same comment could be made on several items in this appendix. I would therefore suggest a principle in this section on recognizing that achievement of protection is often done with the cooperation of the owner of the property. In addition, any land use plan should seek to respect the rights of individual property owners and to not significantly diminish the use and value of ones property without compensation. It should encourage landowners, government bodies, and conservation groups to work together to accomplish the goal of conservation.

As for the preservation of natural areas, our organization agrees that high value natural areas need to be preserved. This standard suggests that all natural areas should be preserved. By definition, it appears that a lot of property could qualify as a natural area. If a natural area is not of a sufficient quality or size and in the path of development, it is our contention preservation of this area might not be feasible.

Page 5

The requirement that all urban medium density and high density development should be served by mass transit facilities ignores the fact that in most cases those purchasing new housing stock often have higher incomes and don't use mass transit. Mass transit planning should be done to accommodate a population that will utilize this valuable service.

As for private sewage systems, these systems are currently being provided at suburban densities in many communities. To require private sewage system use in only rural densities or in existing suburban densities ignores what is currently happening in the market. If more communities were accepting of higher densities and to the extension of municipal services, then this requirement would be more acceptable.

Page 6

It is unfortunate that the realities of the economy are that in order to be successful in farming today, you need to have a large operation in most instances. Even if you are a large operation, you may be at a distinct disadvantage in competing with others in the Midwest and the world who may have better soils and other operational efficiencies. This is not to say that we shouldn't try to protect prime agricultural lands, but to rather indicate that there may be larger economic forces at work that make this effort to protect difficult. Therefore, the statement related to the protection of all such lands to the extent possible should be reworked to recognize the current realities. If the landowner decides to leave the operation, shouldn't that owner be able to recognize at his or her option the entire value of their investment if so chosen. This is another instance where the statement about the concern and respect for property rights would be helpful.

Overriding Concern

As stated in our December meeting, my overall concern is that we have to be very, very careful with the language now. I recognize that in planning that you often have several goals that may conflict with one another and that a good plan balances the goals appropriately. However, the Smart Growth law requires conformance of the underlying zoning to the land use plans. As a result, any component of that plan (even its goals, objectives and standards) that have broad, far-reaching statements can be used to stop or delay economic development. Terms such as "all", "every", and "remaining" are strong terms that don't recognize that there is a balancing that needs to be done that takes into account multiple factors when making land use decisions. These terms could be easily read by a court as placing an emphasis and supremacy of one component over another. This concern is especially heightened in this appendix because there is not balancing language on the respect of land owners use and value of the property as I stated above.

It is our organizations belief that elements concerning the rights of private property owners and the impacts decisions have on housing affordability and the attractiveness of economic development need to be included. To sustain a high quality of life of Southeastern Wisconsin residents, these elements need to be addressed in the goals, objectives and standards of the plan as well.