

June 9, 2022

Lisa Helmuth
Water Resources Management Specialist
Wisconsin Department of Natural Resources
PO Box 7921
Madison, WI 53707

Subject: Oshkosh 2030 Sewer Service Area Plan Amendment

Track No. 173

Dear Lisa Helmuth:

Please find enclosed a copy of a sewer service area (SSA) amendment request for the Oshkosh 2030 SSA Plan which was **approved** by the East Central Wisconsin Regional Planning Commission's Community Facilities Committee (CFC) Meeting on **June 8, 2022**. The City of Oshkosh requested a change to the Designated Management Agency (DMA) status along Witzel Avenue and the northern portion of a property in the City of Oshkosh to extend sanitary sewer to a new development called "The Wit". Details of the Amendment request are outlined in the attached Staff Memo to the CFC. The City's Amendment Application and the Town of Algoma Sanitary District's Objection Letter and Cost-Effective Alternative are also included.

The materials attached for your consideration include the staff memo, the City of Oshkosh's SSA Amendment application, the Town of Algoma Sanitary District's objection letter to the amendment request and their Cost-Effective Alternative, and the CFC Draft Meeting Minutes. This information will also be uploaded to SWIMS.

If you require any additional information or have any questions, please contact me at wpaustian@ecwrpc.org or at 920-886-6832.

Sincerely,

Wilhelmina Paustian

Wilhelmina Paustian
Senior Planner

att: Staff Memo
CFC Draft Meeting Minutes
Amendment Application – Linked [HERE](#)
Town of Algoma Objection Letter and Cost-Effective Alternative – Linked [HERE](#)

cc: Kevin Englebert, ECWRPC
Melissa Kraemer Badtke, ECWRPC
Tim Asplund, WDNR

TO: Community Facilities Committee
FROM: Wilhelmina Paustian, Senior Planner
DATE: May 31, 2022
RE: Oshkosh SSA Plan Amendment Request – Track No. 173

The City of Oshkosh submitted a request to amend the Designated Management Agency (DMA) boundaries in the Oshkosh 2030 Sewer Service Area (SSA) Plan on May 25, 2022. The City of Oshkosh is requesting dual DMA Status along Witzel Avenue with the Algoma Sanitary District. In addition, the City is requesting a change in DMA status along the north 200 ft of the lot and the right-of-way abutting the lot on Witzel Avenue. The City plans to extend sanitary sewer in this area to serve a multi-family housing development called “the Wit.”

Presently, the Town of Algoma Sanitary District is the sole DMA for both of these locations. See the attached “Requested DMA Changes” map for the proposed DMA boundary change.

The City of Oshkosh annexed the property where the Wit is located in March 2018. The attached resolution of the Intergovernmental Agreement regarding boundary changes between the City of Oshkosh and the Town of Algoma updated the City’s corporate boundary originally mapped in the Oshkosh 2030 SSA Plan (WDNR approval November 6, 2007). In the Oshkosh SSA Plan, the City of Oshkosh is identified as a DMA (2007 vintage). Amending the DMA status in the area outlined in the attached map would reflect the City’s current boundary.

There are no mapped Environmentally Sensitive Areas (ESAs) identified in the Oshkosh SSA Plan in the area of the amendment request.

Recently, the Algoma Sanitary District was granted a temporary injunction relating to certain proposed sanitary sewer construction plans issued by the City of Oshkosh in this area. However, the City submitted a transcript of court proceedings from April 18, 2022, highlighting sections demonstrating that the Algoma Sanitary District’s injunction is intended to stop the City from affecting the Sanitary District’s current infrastructure and not to prevent the City from extending service to the Wit.

Amending the SSA plan to change the DMA status along Witzel Avenue to reflect a dual DMA status between the Algoma Sanitary District and the City of Oshkosh grants the ability for either party to provide sanitary sewer service in the area. This means that either of these two entities *could be* responsible for the collection and/or treatment of wastewater in this area. It does not reflect any partiality on behalf of the Commission regarding which entity *should be* responsible for the collection and/or treatment of wastewater in the area.

Commission staff is aware of the current court proceedings and intends to follow any legal decisions that arise with respect to the SSA Plan. It is the responsibility of the City of Oshkosh and the Algoma Sanitary District to follow the recent court ruling as well as applicable law to service sanitary sewer customers and construct sewer lines in this area.

Staff would also like to note that Lawrie Kobza, from Boardman & Clark, sent a letter dated May 27, 2022 stating that the Algoma Sanitary District objects to this Amendment request made by the City of Oshkosh. The Sanitary District stated in their letter that it is only necessary for the City of Oshkosh to extend the Dual DMA status as far as 15-feet east of Maryden Road in order to serve the Wit, rather than extending the DMA status along Witzel Avenue to Wyldewood Drive.

In addition, on June 1, 2022, the Algoma Sanitary District submitted a cost-effective alternative proposal. The Sanitary District stated that they can serve the Wit in a more cost-effective manner. The District can install 85 LF of 8" sewer from the District's existing sewer main infrastructure along Witzel Avenue.

Lastly, it is important to note that the Community Facilities Committee's role is to make a recommendation regarding this amendment request to the Wisconsin Department of Natural Resources (WDNR). WDNR ultimately makes the final decision on the amendment request. To that end, Commission staff has been in close contact with WDNR regarding this amendment and is following WDNR's guidance regarding this request.

The City of Oshkosh SSA Amendment Application and the Algoma Sanitary District Response and Cost-Effective Analysis can be found at the following link: <https://www.ecwrpc.org/meetings-minutes/> (scroll down to Community Facilities Committee meeting and the materials will be found under the June 8th meeting).

DRAFT
MEETING MINUTES
COMMUNITY FACILITIES COMMITTEE
East Central WI Regional Planning Commission

COMMITTEE MEMBERS: *David Albrecht (Perm Alt for Tom Egan), Aaron Jenson (Perm Alt for Brian Smith), James Lowey, Jeff Nooyen, Brenda Schneider*

Date: Wednesday, June 8, 2022

Time: 10:00 a.m.

Place: Virtual Meeting

1. Welcome and Introductions

Vice Chairperson Schneider called the meeting to order at 10:01 a.m.

2. Roll Call

Committee Members Present:

Brenda Schneider Fond du Lac County
 Jeff Nooyen Outagamie County
 James Lowey Menominee County
 Aaron Jenson (Perm. Alt. for Brian Smith)..... Waupaca County
 David Albrecht (Perm. Alt. for Tom Egan) Winnebago County

Committee Members Absent (Excused):

ECWRPC Guests:

Melissa Kraemer Badtke Executive Director
 Kevin Englebert..... Deputy Director
 Wilhelmina Paustian Senior Planner
 Leann Buboltz Administrative Coordinator

ECWRPC Guests:

Kevin Mraz Algoma Sanitary District
 Lawrie Kobza..... Boardman & Clark, LLP
 Jonathan Smies..... Godfrey & Kahn, S.C.
 Bill Nelson..... Godfrey & Kahn, S.C.
 Steve Gohde City of Oshkosh Public Works
 James Rabe..... City of Oshkosh Public Works
 Mark Mommaerts..... Village of Harrison
 Mary Jo Miller..... Martenson & Eisele
 Tim Asplund..... WDNR
 Gunilla Goulding..... WDNR

3. Approval of the Agenda/Motion to Deviate

A motion was made by Mr. Lowey and second by Mr. Nooyen to approve of the agenda. Motion carried unanimously.

- 4. Public Comment –** Kevin Englebert-Deputy Director East Central Regional Planning Commission set time restrictions for public comments. Public input limited to 10 minutes per group.

Attorney Jonathan Smies – On behalf of the City of Oshkosh. The City of Oshkosh SSA Amendment will change the DMA status along Witzel Avenue in the City of Oshkosh. The sewer extension plan would allow the City to provide sanitary sewer service to the Wit property, ideally opening in the next few months. Mr. Smies stated that the property is within the City's Corporate boundaries.

Attorney Lawrie Kobza – On behalf of the Algoma Sanitary District No 1. The Algoma Sanitary District opposed the amendment request. Ms. Kobza stated that the City does not need to extend DMA status all the way to Wyldewood Road. In order for the City to provide a connection from Witzel Avenue to the Wit, they would only need to extend DMA status the east of Maryden Road.

Kevin Mraz - Algoma Sanitary District No. 1. Mr. Mraz discussed how the Sanitary District can more cost effectively provide sanitary sewer service to the Wit.

5. Approval of the Minutes of the January 12, 2022 Community Facilities Committee Meeting

A motion was made by Mr. Lowey and seconded by Mr. Jensen to approve as presented. Note – Mr. Nooyen abstained from the vote. Hearing of no further discussion, motion carried unanimously.

6. Announcements –

A. Staff Report – Wilhelmina Paustian, Senior Planner. East Central staff continues to conduct sanitary sewer reviews for conformance with the Water Quality Management Program (WQM). Staff consults with the Wisconsin Department of Natural Resources (WDNR) on various projects to ensure compliance with State Statutes. Staff continues work on the Fox Cities 2030 SSA Plan which was last approved in 2006. Staff met with the Communities in the Fox Cities and the Wastewater Treatment Facilities (WWTF) operators to provide an update on the Plan update process.

B. Approval of the 2022-2023 Community Facilities Committee Meeting Schedule. Mr. Nooyen commented that he supports having the virtual option available.

A motion was made by Mr. Nooyen and second by Mr. Jensen to approve of the schedule. Motion carried unanimously.

7. New Business/Action Items

A. Election of Chair and Vice Chair

Chair: Mr. Lowey nominated Ms. Schneider to serve as Chair by acclamation. Mr. Nooyen second. Motion carried unanimously.

Vice-Chair: Mr. Nooyen nominated Mr. Lowey to serve as Vice-Chair by acclamation. Mr. Jensen second. Motion carried unanimously.

B. Track 171 – Neenah-Menasha 2030 Sewer Service Area Amendment

Request: The amendment was submitted under Policy I, A (acreage swap).

The amendment adds a total of 62.81 acres (Dietz Woodland Road Property) and removes a total of 72 acres (Bartlein Property) for a future development. The information provided by the applicant was thorough and complete with regard to ECWRPC's amendment criteria. Staff recommended that the Community Facilities Committee approve the Village of Harrison's SSA Amendment request for Track No. 171. The applicant notified the property owner to be removed from the SSA of the Amendment request. No formal response from that property owner was received.

A motion was made by Mr. Lowey and second by Mr. Nooyen to approve of the proposed Track 171 SSA Amendment. Motion carried unanimously.

C. Track 172 – Fond du Lac 2040 Sewer Service Area Amendment Request:

The Town Board of Taycheedah has submitted a request to amend the Fond du Lac Sewer Service Area (SSA) to include 0.59 acres of vacant agricultural land. The proposed amendment was submitted under Policy I, D to expand the SSA and increase acreage to accommodate reasonable growth for the property owner to build a garage. The Sanitary District No. 1 of the Town of Johnsburg approved the petition, and the Town Board certified the petition. Staff recommended that the Community Facility Committee approve the SSA Amendment request for Track No. 172.

A motion was made by Mr. Albrecht and second by Mr. Nooyen to approve of the proposed Track 171 SSA Amendment. Motion carried unanimously.

D. Track 173 – Oshkosh 2030 Sewer Service Area Amendment Request:

Change in DMA Status. The City of Oshkosh submitted a request to amend the Designated Management Agency (DMA) boundaries in the Oshkosh 2030 Sewer Service Area (SSA) Plan. The City of Oshkosh requested dual DMA Status along Witzel Avenue with the Algoma Sanitary District, and a change in DMA status along the northern portion of the lot on Witzel Avenue in order to extend sanitary sewer to serve a multi-family housing development called "the Wit." Right now, the Town of Algoma Sanitary District is the sole DMA for both of these locations.

The City of Oshkosh provided documentation that they annexed the property where the Wit is located in March 2018. The City also sent supporting documentation of court proceeding transcripts from April 18, 2022 which indicate the Algoma Sanitary District's injunction is intended to stop the City from affecting the Sanitary District's current infrastructure and not to prevent the City from extending service to the Wit.

Recently, the Algoma Sanitary District was granted a temporary injunction relating to certain proposed sanitary sewer construction plans issued by the City of Oshkosh in this area. Commission staff stated that they are aware of the current court proceedings and that they intend to follow any legal decisions that arise with respect to the SSA Plan. It is also the responsibility of the City of Oshkosh and the Algoma Sanitary District to follow the court rulings and the applicable law to service sanitary sewer customers and construct sewer lines in this area.

Staff also noted that Lawrie Kobza, from Boardman & Clark, sent a letter stating that the Algoma Sanitary District objects to this Amendment request made by the City of Oshkosh. In addition, the Algoma Sanitary District submitted a cost-effective alternative proposal. The Sanitary District stated that they can serve the Wit in a more cost-effective manner using existing sewer main infrastructure.

Commission staff has been in close contact with WDNR regarding this amendment and is following WDNR's guidance regarding this request. At this time Staff did not have a recommendation for the Community Facility Committee.

Mr. Nooyen inquired to hear where the DNR stands on this. Mr. Englebert shared that his understanding is that the DNR will wait to see how the Committee handles this kind of amendment prior to making a decision. The WDNR ultimately makes the final decision on the amendment request.

Mr. Asplund - DNR agreed with Mr. Englebert and shared that the Commission acts on behalf of the DNR in administering the Clean Water Act and the State Statutes. The DNR will use the findings of this process as one aspect of their review regarding this matter. Mr. Englebert shared that there is an appeal process following the DNR's review and action, which can be outlined in more detail if that situation arises.

A motion was made by Mr. Nooyen and second by Mr. Albrecht to approve the proposed Track 171 SSA Amendment. Discussion – Chair Schneider stated her thoughts of the process procedure that typically a building permit does not get issued prior to knowing who would serve the structure. Ms. Paustian stated that the intergovernmental agreement was between the City of Oshkosh and Town of Algoma. Motion carried with Chair Schneider voting nay due to the lawsuit that is currently active.

8. Informational/Discussion Items

County Roundtable Discussion – Mr. Albrecht apologizes for being late due to poor weather conditions.

9. Establish Time and Place for Next Commission Meeting

- A. *The next Community Facilities Meeting will take place Wednesday, September 14, 2022 at 10:00 a.m. Further details will be forthcoming.*
- B. *The next Quarterly Commission Meeting will take place Wednesday July 27, 2022 at 10:00 am. Held at the city of New London- Municipal Building. Further details will be forthcoming.*

10. Adjourn – A motion was made by Mr. Jensen and second by Mr. Albrecht to adjourn. Time noted at 10:57 a.m.

Respectfully submitted

Leann Buboltz – ECWRPC Administrative Coordinator