

## WCWRPC Review

# Chippewa Falls/Eau Claire Urban Sewer Service Area Plan Request for Type IV Amendment

**Project:** Condominium Plat of Concord Trail – Lots 2-6 & 8-15  
**Requesting Entity:** City of Eau Claire Department of Public Works  
**Request Received:** received by WCWRPC on 3/4/11  
**Review Date:** April 1, 2011

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### **Sewer Service Area (SSA) Planning Background**

The *Chippewa Falls/Eau Claire Urban Sewer Service Area Plan for 2025* (SSA Plan) was developed to meet the pertinent requirements of the Federal law (Section 201 and Section 208), Wisconsin NR121, and WDNR planning guidance. This SSA plan, as a component of the WDNR water quality management plan, establishes the framework within which wastewater facility plans and sewer extensions are reviewed under NR121. The MPO serves as the local policy committee for the development (and update) of the SSA plan, and has an important advisory role in any plan amendments.

### **What is a Type IV Amendment?**

The SSA plan delineates those areas with a potential for future sewered development by 2025, excluding environmentally sensitive areas (e.g., floodplains, wetlands, slopes greater than 20%, endangered species or habitats, sinkholes). A Type IV amendment is a change to the plan to allow for the extension of sewer service to an area delineated as an environmentally sensitive area (ESA).

### **Process for Plan Amendments**

According to the approved SSA plan, all requests for Type IV amendments will be reviewed in a case-by-case, site-specific manner. The plan recognizes the possible conflict between development and preservation of ESAs, and this amendment is an attempt to allow both to co-exist. The following steps are required:

- 1) Requests of this type should be submitted to the WCWRPC by the governmental entity that will be servicing the proposed area with sufficient information for an informed recommendation.
- 2) A proposed Type IV amendment necessitates a meeting between the developer, the municipality, WCWRPC, and WDNR during the analysis of a proposal to eliminate or minimize disagreements and misunderstandings early in the process. In this instance when much of the review was completed in 2008, a series of phone conversations took place between the City, WCWRPC, and WDNR in lieu of a meeting; no questions for the developer were identified.
- 3) WCWRPC and regional WDNR staff will cooperatively review and analyze the proposed amendment based on four criteria identified later in this report. Due to current

restructuring in WDNR, regional WDNR staff was not available to assist with this review.

- 4) Based on the cooperative review, WCWRPC will report the findings of the analysis to the MPO. The MPO will then review the request and recommend approval or disapproval of the amendment. According to the SSA Plan, “[a]ll changes in the plan require an amendment which must be approved by the MPO with final approval being made by the WisDNR, with the exception of a Type IV amendment which only requires WisDNR approval.”
- 5) This amendment involves areas with slopes greater than 20% which requires from the developer an erosion control plan incorporating the best available management techniques using guidance from the Wisconsin Construction Site Best Management Handbook (WDNR, April 1989). The developer must also satisfy the following hydraulic criteria on all sites of the proposed development: all post-development discharges from the site for a 3-year, 24-hour frequency storm shall be equal to or less than the pre-development peak discharges from the site for a 3-year, 24-hour frequency storm. However, this stormwater management requirement is not to supersede any local ordinances in place.

It is the responsibility of the municipality to review and ensure proper implementation of the proposed erosion control plan. Upon approval of the erosion control plan by the municipality, it will send a letter stating approval to WDNR. Approval of the erosion control plan by the municipality is needed for the issuance of a Type IV Amendment by the WDNR.

- 6) Following the MPO’s action, the amendment request will be forwarded to the WisDNR for final approval.

### **Site Description**

The Concord Trail amendment area is located within the City of Eau Claire northwest of the intersection of USH 53 and STH 312 (a/k/a “North Crossing”). Until recently, the site was mostly wooded, though it had been used for excavation for borrow (fill) during the past sixteen years, so land disturbance had occurred. All developable areas are now cleared of woody vegetation (except any new plantings) and grading at the site has occurred more recently as described in the history section below. A new street was recently constructed across the site, along with the sewer and water mains along this new street.

The site consists of 4.3 acres in total, including the street. Though a preliminary plat has not been submitted, the erosion control plan does identify 17 lots of a similar size to nearby, existing single-family residential lots. Single-family residential development sold as condominiums is contemplated for these lots.

## **History Pertaining to this Amendment Request**

Understanding the recent history of the site and this amendment request provides important context for its review.

- 1994** A WDNR Wisconsin Pollution Discharge Elimination System (WPDES) permit was issued at the site to allow for land disturbance exceeding five acres for excavation for fill to be used at other locations in the area. This excavation included areas of slopes in excess of 20% grade.
- 2001** A second WDNR WPDES permit was issued for the site for continued excavation.
- 2008** The City of Eau Claire required secondary access for emergency services and a looped water service as a condition of approval for development of an adjacent property (Princeton Crossing Condos) to the south. Based on available locations and consideration of input from the neighborhood, a new roadway, sewer main, and water main was approved for construction across the Concord Trail property (the subject of this amendment request) to serve the Princeton Crossing Condos project. A stormwater pollution prevention plan (SWPP) was prepared by the developer for the grading, road, and utility extension. The City of Eau Claire also approved a restoration grading plan for the site.

On August 1, 2008, a third WDNR WPDES permit was issued for the site for continued excavation, and for the new road and utility extension based on the accepted SWPP.

On September 22, 2008, WCWRPC reviewed the proposed sewer extension in accordance with the SSA Plan. At that time, we were not provided detailed maps of the site, building footprints, or the proposed layout of the street and utility lines. A letter was issued to the developer and WDNR stating that proposed construction was in conformance, but also noted that ESAs (20+% slopes) do exist and the “steep slopes cannot be altered to remove them from an environmentally sensitive area designation.”

On October 1, 2008, the WDNR issued their approval for the sewer extension based in part on the 9/22/08 WCWRPC letter of conformance.

- Current** Grading at the site has removed about 0.89 acres of steep slopes (20+% grade) which would have been potentially impacted by the sewer extension. Grading shown in the plans submitted with this request is substantially complete and surface restoration is in progress. The developer will be expected to complete all plantings and work shown on the approved drawings. The street shown in the plans has also been constructed, along with the sewer and water mains.

With the investment of road and utility improvements required at the site, the developer is now proposing to plat the site for residential development. The City of

Eau Claire has requested WDNR approval of this SSA plan amendment prior to accepting the developer's submittal for a preliminary plat in this area.

## **Review of the Request Based on Relevant Criteria**

### **CRITERIA 1. There will be no significant adverse water quality and/or environmental impact associated with providing sewer service to the area.**

WCWRPC is not staffed with a licensed engineer, so we rely heavily on the applicant municipality and the Wisconsin Department of Natural Resources for the review of such requests. The majority of this review occurred in 1998 as part of the approval of the grading plan, SWPP, WPDES permit, and sewer extension permit mentioned previously.

The City of Eau Claire amendment justification notes that the site is not located near any streams and is nearly one mile from the Eau Claire River. Stormwater runoff from the site is conveyed to a regional stormwater facility constructed fairly recently in conjunction with the Highway 53 bypass. The facility was designed by Barr Engineering under the direction of the City with excess system capacity to accommodate new development in the entire area north of the Eau Claire River which is tributary to the system. If needed, the City requires additional on-site stormwater storage and erosion controls in accordance with City code.

According to the NRCS Soil Survey of Eau Claire County, soils at the site have a moderate-to-severe erosion hazard, with medium to rapid runoff, in particular as one moves north across the site. The excavation and grading completed to date has largely removed these previously existing steep slopes which are part of developable lots. The grading and erosion control plan approved by the City of Eau Claire does create a new area (0.62 acres) of steep slopes (20+% or greater) along the back sides of Lots 1 – 10 which is being planted with trees.

Based on available records, no wetlands, endangered species, or endangered habitats have been identified at the site, though some rare aquatic and terrestrial species and high-quality natural communities have been identified in the general area. The site is now cleared of most woody vegetation. And given that residential development surrounds the site on three sides, with a highway interchange just beyond, any potential value of the site as a wildlife corridor is diminished.

### **CRITERIA 2. The proposed amendment is in compliance with the policies and goals of this plan.**

The SSA Plan has three primary goals, with related objectives and policies under each. Each goal, and its relationship to the request, is summarized here:

#### **Goal 1. Create an orderly and planned pattern of community growth**

A SSA Plan boundary amendment is not needed for this project. The developer proposes residential development for the site. Properties adjacent to the site on the east, west, and south sides are already developed with housing; sewer service is already available for all of these properties. According to the City's request, the proposal is consistent with the City of Eau Claire Comprehensive Plan and sewer service can be provided in a cost-effective manner. Approval of

the request will allow the developer to develop the site in a more organized way and add additional parcels, which is consistent with the goal and related policies pertain to contiguous and compact growth.

Goal 2. Protect water quality, natural resources, and sensitive natural areas.

Addressed as part of Criteria 1 above. The amendment would remove environmentally sensitive areas from the SSA Plan map, though the areas in question were graded prior to this request.

Goal 3. Provide facilities and services in a efficient and environmentally sound manner.

Addressed as part of Criteria 3 below.

However, the timing of this request does conflict with certain plan policies, since the grading is complete and the steep slopes have been removed. The approved SSA Plan includes the following pertinent policies:

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**3.4.2 Non-Encroachment of the Environmentally Sensitive Portion of a Site**

The plan does allow sewer extensions or hookups to buildings on lots which are partially within an environmentally sensitive area if the actual construction is not on that portion of the lot affected by any one of the five criteria (wetlands, floodplains, 20% or greater slope, endangered species/habitats, and closed depressions). In addition, there must be sufficient setbacks and erosion control measures taken, as determined by local zoning or land development controls

Any alteration of wetlands, floodplain, slopes 20% or greater, endangered species/habitat, or closed depressions to remove these areas from an environmentally sensitive area, and hence make them available for sewer development, is prohibited. Any change to the environmentally sensitive area delineation requires WisDNR approval and a plan amendment.

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*Policy 2.1.5 Encourage best management practices for erosion and stormwater control where sewer development is proposed for areas with slopes of 12% or greater.*

*Any land disturbance or the footprint of any building or structure associated with sewer development, including but not limited to principal or accessory building, parking areas, or retaining walls, shall not encroach upon slopes 20% or greater, without a Type IV Sewer Service Area Plan amendment. Open decks and/or stairways on post and pier foundations may encroach upon slopes 20% or greater with approval of the local regulating authority.*

*A naturally occurring steep slope of 20% or greater shall not be graded, filled, or otherwise altered to avoid these requirements.*

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**6.3.4 Type IV Amendment. The Development of an Area Designated as an Environmentally Sensitive Area**

All requests for Type IV amendments will be reviewed on a case-by-case, site-specific manner. A Type IV Amendment is requested by the municipality wishing to extend sewer service to an area delineated as an environmental sensitive area.

**CRITERIA 3. Such sewerage service can be provided in a cost-effective manner.**

A sewer main now transects the site. Sewered development is existing or approved for adjacent properties to the south, east, and west. A sanitary sewer main also currently exists along LaSalle Street on the north side of the property.

**CRTIERIA 4. All appropriate local, state, and federal environmental permits (such as erosion control, wetland preservation, floodplain, etc.) have been granted for the proposed development.**

To our knowledge, steep slopes are the only environmentally sensitive features at this site. The timeline in the previous section identifies the approved environmental permits to date. All related plans were prepared by a Professional Engineer licensed to practice in the State of Wisconsin. Grading and restoration work is substantially complete and no additional environmental permits may be needed.

However, it is possible that additional permits with environmental protection attributes may be required by the City during the subdivision plat approval process or as part of building code enforcement. For instance, erosion control will be required as appropriate to the type of structures constructed.

## **Conclusions**

This WCWRPC review was limited to the impacts of the proposed sewer extension and does not constitute a land use, zoning, or subdivision plat review or engineering analysis of the site. Such additional reviews and analysis made be required by WDNR or the municipality.

### **Regarding the Amendment Request**

**WCWRPC identified no findings pertaining to the amendment request which conflict with the relevant SSA Plan criteria, except for concerns related to the timing of the request.** Otherwise, the request appears to adequately address all four criteria based on the information provided by the City of Eau Claire.

Since a plat has not been developed or approved, a recommendation for approval of this amendment request by **the MPO should include the condition that any applicable environmental or erosion control permits are obtained and related plans implemented as required by City of Eau Claire code.**

### **Regarding the Timing of this Request**

It would have been more appropriate to obtain this Type IV SSA Plan Amendment approval prior to the WDNR approval of the sewer extension as suggested by WCWRPC's 9/28/11 letter. In the past, such reviews were largely limited to the footprints of sewer buildings, parking areas, and retaining walls, though the SSA Plan does not specifically make this distinction. But in this case, building development on the site was proposed after the sewer main was installed, the site graded, and the steep slopes removed.

**WCWRPC recommends that the MPO revisit the SSA Plan policies and process to clarify the definitions and circumstances which trigger Type IV amendments and to revise the review process, as needed, to address such circumstances.** Such a review process would also be an opportunity to update the process to reflect changing WDNR procedures, local code changes, and to incorporate the lessons learned during this review.

It should be noted that a Type IV SSA Plan amendment in the Chippewa Falls-Eau Claire area has been quite rare. The WDNR has stated that such amendments should be seldom used and avoided if possible which is consistent with the goals and policies of the approved SSA Plan.

### **Attachments**

- Aerial photo of the area
- WDNR WPDES Permits from 1994, 2001, and 2008
- WCWRPC Review Letter, 9/22/08
- WDNR Sanitary Sewer Extension Permit, 10/1/08