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September 9, 2022

Technical Advisory Committee  
Chippewa-Eau Claire Metropolitan Planning Organization  
800 Wisconsin Street  
Eau Claire, WI 54703

RE: Objection to City of Eau Claire's Request to Amend Sewer Area

Dear Technical Advisory Committee Members:

The Town of Washington re-iterates its objection to the City of Eau Claire's request to amend its sewer service area ("SSA") and opposes the staff recommendation because they do not comply with the Chippewa-Eau Claire Metropolitan Planning Organization's ("Organization") stated policies for SSA amendments. Consequently, the Technical Committee and the Organization should postpone a decision on the SSA amendment pending the outcome of the Town of Washington's lawsuit challenging the validity of the City's annexation, or in the alternative, deny the request.

The City's request for an SSA amendment is inextricably intertwined with a petition for annexation it received in May of 2022. Prior to filing the annexation petition, a developer working with the annexation petitioners proposed a residential development within the Town that would not need City utilities. Only after the developer was unable to secure a zoning amendment from Eau Claire County did the annexation petition come forth. The Town has since challenged that annexation in court, because it does not comply with Wisconsin law.

The area proposed SSA amendment area is approximately 2.2 miles from the City's border. Any residential development that occurs will require installation of utilities a significant distance from the City's current boundary. In between that area and the City is a Town residential development using private onsite wastewater treatment systems.

All SSA amendments must comply with the goals and policies of the Chippewa Falls/Eau Claire Urban Sewer Service Area Plan-2025 ("Plan"). Plan at 103-104. This amendment does not.

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The staff report—by its own admission—ignores binding policies that the Organization must adhere to. The Plan makes clear that “using the words ‘will’ or ‘shall’ are mandatory and regulatory aspects of the *Chippewa-Eau Claire Urban Sewer Service Plan*.” Plan at 82. Policy 1.1.9, in turn, requires that “Proposed plan amendments ... ***shall*** not create a void within the service area.” Plan at 83 (emphasis added). Yet the staff report expressly chooses to ignore this mandatory provision, and instead support the SSA amendment. The Organization cannot pick and choose which policies to apply and ignore. Doing so is arbitrary and capricious, and would subject the Organization and its decision to legal challenges.

The staff report also discards other policies that the TAC and Organization must consider in its decision. The Plan requires that “[s]ewer extensions that reflect the contiguous and compact pattern of development should receive priority over extensions that will contribute to urban sprawl.” *Id.* at 82. Similarly, the Plan requires that “[f]uture residential development should occur adjacent to existing development to contain costs of public service provisions, and reflect compact and orderly development.” Plan at 83. The staff report does not include any analysis of these policies. There is no doubt that the amendment does not comply with them. Residential development would occur miles from the City’s border. Lowes Creek Park and farmland would separate the area from the City. A residential development 2.2 miles away from the City is not a compact pattern of development. The City will need to extend miles of infrastructure just to reach the area. A nearby residential subdivision already has private onsite water systems and will not hook up to City utilities.

Finally, Policy 1.1.7 mandates that “the Sewer Service Area Plan (SSA Plan) and boundary should not be used to promote nor hinder annexation petitions....” *Id.* Again, the staff report ignores this policy. Unquestionably the City only sought this amendment because of the annexation. If the City truly felt the need to include the territory in its SSA, it would have made its request long ago. Instead, the annexation petition motivated the City to request the SSA amendment. Accordingly, this amendment violates policy 1.1.7.

The TAC and Organization cannot ignore these policies. At the very least, it must determine whether the SSA amendment implicates these policies, and then determine whether good reason exists not to apply any non-mandatory policies. Failure to justify those decisions is arbitrary and capricious.

Given the pending litigation challenging the City’s attempted annexation, the TAC and Organization should table the application until the litigation is resolved. There are no requirements to approve the application within a certain time period. Similarly, there are no prohibitions against tabling an application. Tabling the application is the best course of action given that the annexation is unlawful.

September 12, 2022

Page 3

Alternatively, the Town requests that the TAC and Organization recommend denial of the SSA amendment. As explained above, it does not comply with Organization policies.

Very truly yours,

STAFFORD ROSENBAUM LLP

A handwritten signature in black ink, appearing to read "Rick Manthe", with a long horizontal flourish extending to the right.

Rick Manthe

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