

Hilbert, Hans

From: Matthews, Weston K - DNR <weston.matthews@wisconsin.gov>
Sent: Thursday, September 29, 2022 1:45 PM
To: Hilbert, Hans
Cc: Disser, William T - DNR; Ramminger, Allen J - DNR
Subject: RE: REVIEW OF "NAVIGABLE WATERWAY" CLASSIFICATION
Attachments: Pitman Dam Watershed.JPG; L2_US1.jpg

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Hi Hans –

[Map Link](#)
<https://arcg.is/1KnLKD>

After a desktop review and internal discussions with Will and Al who were on site, the waterway reach in question upstream of the impoundment was determined to be non-navigable in opinion.

The relatively small upstream watershed and waterway field indicators (width/depth at OHWM approximations) do not point to navigable conditions on a reoccurring basis.

It is my understanding that the landowner may be leaning towards dam removal.

Let me know if you have any questions.

Thanks,
Wes

From: Disser, William T - DNR <william.disser@wisconsin.gov>
Sent: Wednesday, September 14, 2022 12:11 PM
To: Hilbert, Hans <hilbert.hans@countyofdane.com>
Cc: Matthews, Weston K - DNR <weston.matthews@wisconsin.gov>
Subject: RE: REVIEW OF "NAVIGABLE WATERWAY" CLASSIFICATION

Hi Hans,

Wes is still out of the office until tomorrow, but I do plan to share the information that Al and I gathered with him upon his return. I've copied him on this email so that he's aware of your request to stay in the loop, once he's made his determination.

Thanks,

We are committed to service excellence.

Visit our survey at <http://dnr.wi.gov/customersurvey> to evaluate how I did.

Will Disser

(he/him)
Water Management Engineer
Wisconsin Department of Natural Resources
3911 Fish Hatchery Road
Fitchburg, WI 53711
(608) 622-6780
William.Disser@wisconsin.gov

From: Hilbert, Hans <hilbert.hans@countyofdane.com>
Sent: Wednesday, September 14, 2022 11:16 AM
To: Disser, William T - DNR <william.disser@wisconsin.gov>
Subject: RE: REVIEW OF "NAVIGABLE WATERWAY" CLASSIFICATION

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Hi Will,

Nice to meet you last week. As I recall, after I left, you and Al were going to try to gather some further information upstream of the pond to share with Wes in order to make a navigability determination of the waterway—if there is any further determination made on that I'd appreciate being kept in the loop.

Thanks!

Hans

From: Disser, William T - DNR <william.disser@wisconsin.gov>
Sent: Tuesday, August 30, 2022 9:02 AM
To: Lynn Pitman <lpitman@gmail.com>
Cc: Hilbert, Hans <hilbert.hans@countyofdane.com>; Schure, Jeff J - DNR <Jeff.Schure@wisconsin.gov>; Ebel, Seth <Ebel.Seth@countyofdane.com>; Piaget, Amy <Piaget.Amy@countyofdane.com>; Diehl, Curt <Diehl@countyofdane.com>; Matthews, Weston K - DNR <weston.matthews@wisconsin.gov>
Subject: RE: REVIEW OF "NAVIGABLE WATERWAY" CLASSIFICATION

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Hi Lynn,

As Wes mentioned, I am the Water Management Engineer with WDNR overseeing dams in Dane County – I plan to work with Wes and Seth to help you figure out your next steps here as far as any DNR permitting requirements are concerned. I also agree that a site visit would probably be of value to confirm whether the structure meets the statutory definition of the dam – based on the information that we have so far, it seems like it might (I'll note here as well that navigability is a separate issue – a structure can be a dam according to Wis. Stats. Ch. 31 even if the watercourse it is on is deemed non-navigable).

If the structure is a dam, then DNR would typically need to review and approve engineering plans for the kind of repair work that you described in your original emails to Hans Hilbert. I'm still digging around in our files to confirm, but as you

already discussed with Wes, it looks like this structure may not have been authorized as a dam at the time it was built, which means it would likely need to go through the permitting process to get officially authorized before we could issue plan approvals to repair/reconstruct it. I see some of the history of the structure that you've described in your emails below – any records that you have from the structure's original construction (or can track down from the previous owner) would potentially make the process easier/satisfy some of the items on the checklist that Wes sent you, though it's possible to "start from scratch" if need be and have an engineer prepare as built plans of the structure in its current state. I'm not entirely sure what federal programs might have been in play in the 1970s, especially if NRCS has no record of the structure, but I can ask around here at DNR. I do know that the NRCS specifications for earthen dams were occasionally used as industry standards, so it's plausible another public or private entity could have constructed a dam to their standards.

Since you noted the cost of repairs as a potential concern, I did also want to raise the Dam Removal Grant Program as a potential funding source, if the structure meets the definition of a dam and you wish to go the route of removing it altogether. The grant program can provide reimbursement for up to 100% of eligible costs (up to \$50,000) for dam owners wishing to remove a dam. I know there have been some owners in the past with unauthorized dams who opt for this route, rather than getting the dam authorized and paying the cost to repair/upkeep the dam over time. This is something we can discuss in greater detail after the site visit, if you have an interest in the program.

I look forward to meeting you during the site visit (which I believe Seth is in the process of planning) – in the meantime, please let me know if you have any questions.

Thanks,

We are committed to service excellence.

Visit our survey at <http://dnr.wi.gov/customersurvey> to evaluate how I did.

Will Disser

(he/him)

Water Management Engineer

Wisconsin Department of Natural Resources

3911 Fish Hatchery Road

Fitchburg, WI 53711

(608) 622-6780

William.Disser@wisconsin.gov

From: Matthews, Weston K - DNR <weston.matthews@wisconsin.gov>

Sent: Thursday, August 25, 2022 1:37 PM

To: Lynn Pitman <lpitman@gmail.com>

Cc: Disser, William T - DNR <william.disser@wisconsin.gov>; Hilbert, Hans <hilbert.hans@countyofdane.com>; Schure, Jeff J - DNR <Jeff.Schure@wisconsin.gov>; ebel.seth@countyofdane.com; Paiget, Amy - DATCP <Paiget.Amy@countyofdane.com>; diehl@countyofdane.com

Subject: RE: REVIEW OF "NAVIGABLE WATERWAY" CLASSIFICATION

Hi Lynn –

Thank you for the information. I know Seth is looking to set up a site visit which I agree would be valuable.

During the visit the Department would evaluate for potential jurisdiction in either/both the pond and dam structure and would be better able to communicate the applicable permitting requirements for the proposal.

Will Disser who is currently out of the office is an important component into these conversations as the DNR Dam Safety Engineer.

I will keep a lookout for any site visit coordination.

Will Disser may respond when he gets back on more information pertaining to the dam structure and next best steps.

Thanks,
Wes

From: Lynn Pitman <lpitman@gmail.com>

Sent: Thursday, August 25, 2022 10:28 AM

To: Matthews, Weston K - DNR <weston.matthews@wisconsin.gov>

Cc: Disser, William T - DNR <william.disser@wisconsin.gov>; Hilbert, Hans <hilbert.hans@countyofdane.com>; Schure, Jeff J - DNR <Jeff.Schure@wisconsin.gov>; ebel.seth@countyofdane.com; Paiget, Amy - DATCP <Piaget.Amy@countyofdane.com>; diehl@countyofdane.com

Subject: RE: REVIEW OF "NAVIGABLE WATERWAY" CLASSIFICATION

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Hi Weston-

Thank you for your helpful reply, and for the map links. I've also been in touch with several other Dane County staff, who I'm cc'ing on this email.

I certainly hope we don't have to start at square one! Some additional information about the pond that might be useful to you in assessing next steps:

-the former owner of the property, who sold it to my husband in 1973, said that pond had been built the last year of a federal cost-share program, in 1970 or 1971.

-Several people, including Seth Ebel at Dane County Land Conservation, have said that the dam appears to follow plans for a NRCS erosion control dam.

-However, initial inquiries to NRCS have not turned up any records for the dam.

-the fields on the upward slopes from the pond qualified for CRP for erosion control several years later, when CRP programs were introduced.

-the pond is primarily spring-fed. The pond has silted in over the years; our guess is that it is 7-8 feet deep.

-the several rivulets that appear in the wet run 1/2 way down to the pond are roughly at a maximum 4-6 inches deep, and up to 12 to 24 inches across at the widest point. The rivulet does not meet the definition of "upon which it is possible to float a canoe or small watercraft on a recurring basis." https://dnr.wisconsin.gov/topic/Waterways/general_info/ohwm.html

-the drainage from the pond dam pipe, where the erosion is occurring, is into a marshy area. Similar to the wet run that drains into the pond, there is not a stream of any size there. The area is low lying, so there is a small culvert under Hwy 92. I don't believe there is a stream on the other side of the highway, which is cropland and a 4-acre home site. I don't believe that there is any direct drainage into the Mt Vernon trout stream. Some spots along both sides of the highway are low-lying, however.

It seems that a site visit would be useful. Seth Ebel has offered to look into that possibility and coordinate that with staff from several other relevant agencies. I hope that an appropriate person from DNR will be able to be part of this.

Any next steps that you (or anyone else cc'd on this email) would recommend are much appreciated.

Thank you.

Lynn Pitman
608-712-1793

On Aug 24, 2022, at 3:23 PM, Matthews, Weston K - DNR <weston.matthews@wisconsin.gov> wrote:

Hi Lynn –

[Map Link](#)

<https://arcg.is/r0Hyb>

Pond/dam appears between 68'-74'

Sorry I missed your call but thank you for the email.

DNR Pond General Page: <https://dnr.wisconsin.gov/topic/Waterways/construction/ponds.html>

DNR Dam General Page: <https://dnr.wisconsin.gov/topic/Dams>

If the dam and impoundment/pond fall within the DNR's jurisdiction and have not previously received DNR authorization, you will likely need to apply for permits to get the dam authorized (includes the proposed dam repairs) along with the connected impoundment/pond authorized.

A dam is a barrier that impounds water and generally serves the primary purpose of retaining water. Wisconsin law defines a dam as “any artificial barrier in or across a watercourse which has the primary purpose of impounding or diverting water and includes all appurtenant works, such as a dike, canal or powerhouse”.

Wisconsin State Law requires a person to obtain a permit if they plan to construct, dredge, or enlarge a pond or artificial waterbody, or any part of either that is:

- connected to a waterway;
- located within 500 ft. of a waterway; or
- constructed within a wetland (this includes wetland restorations that result in ponds).

Dam Permitting – Individual Permit: Will Disser cc'd on this email is the DNR Dam Safety Engineer covering Dane County

For existing dams that are not authorized (and proposing repairs) the applicant/landowner may need to essentially go through the “new” dam permitting process. The applicant would hire an engineer to do as-builts of the dam, and all other pertinent information on the new dam check list would be completed regarding the existing dam instead of a new dam.

<https://dnr.wi.gov/topic/dams/documents/NewDamApplicationChecklist.pdf>

Pond Permitting – Individual Permit:

Similar to the dam permitting, an individual pond permit may need to be filled out to cover the existing pond, with the check list being completed regarding the existing pond instead of a new pond. See link below for a starting point for the information that would be needed.

<https://dnr.wi.gov/topic/waterways/documents/PermitDocs/IPs/IP-pond.pdf>

The pond does appear to be connected to the downstream Class 1 special designated trout stream Mt. Vernon Creek; it can be challenging for the DNR to permit the ponding/impounding of a trout stream's upstream water source given the detrimental impacts it can cause on the receiving sensitive trout waters. This will be part of the DNR's review process when a formal application is submitted.

After you have had a chance to look over the materials, let me know if you have any questions.

Thanks,
Wes

From: Lynn Pitman <lpitman@gmail.com>

Sent: Wednesday, August 24, 2022 1:28 PM

To: Matthews, Weston K - DNR <weston.matthews@wisconsin.gov>

Subject: REVIEW OF "NAVIGABLE WATERWAY" CLASSIFICATION

**CAUTION: This email originated from outside the organization.
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Dear Weston Matthews,

I just left you a voicemail, but thought I'd also send you an email.

We are in the process of understanding the steps required to repair or replace the eroding dam of the farm pond on our property at 1410 State Rd 92, Verona. We are in Primrose Township.

According to Dane County zoning staff, it appears that the permitting required is based on the classification of the wet run/rivulet which runs into the pond, which is primarily spring fed, as a navigable waterway. See the email exchanges below.

While there is a portion of the rivulet in the wet run - perhaps 100 feet - that has eroded what might be considered a "bank", there is no way any small watercraft can float on that portion.

What is the process for reviewing and changing this classification? Is it possible to get someone out to look at it? I think that a visit would quickly answer any questions about this.

Thank you.

Lynn Pitman
608-712-1793 (cell)

Begin forwarded message:

From: "Hilbert, Hans" <hilbert.hans@countyofdane.com>

Subject: RE: Primrose township - Farm pond dam reconstruction questions

Date: August 23, 2022 at 10:40:42 AM EDT
To: 'Lynn Pitman' <lpitman@gmail.com>, "Piaget, Amy" <Piaget.Amy@countyofdane.com>
Cc: "Diehl, Curt" <Diehl@countyofdane.com>

Lynn,

It would be a better question answered by DNR, but when a pond is created from something considered a "water of the State" then the pond too becomes a "Water of the State". The DNR makes their determinations of waterways based on historical mapping to determine if hydrology exists. In this case the rivulet was classified by the DNR as a waterway and therefore the pond is too. The other end of spectrum is when someone creates a pond by digging a hole in the ground with no natural inlet, in this case the DNR classifies them as artificial because they have no hydrologic history. I hope this helps.

Hans

-----Original Message-----

From: Lynn Pitman <lpitman@gmail.com>
Sent: Monday, August 22, 2022 2:23 PM
To: Piaget, Amy <Piaget.Amy@countyofdane.com>
Cc: Hilbert, Hans <hilbert.hans@countyofdane.com>; Diehl, Curt <Diehl@countyofdane.com>
Subject: Re: Primrose township - Farm pond dam reconstruction questions

Amy and Hans -

Thanks for both of your responses.

Could you clarify why the pond dam is on a "navigable waterway"? It was scraped out and the dam built at the end of a wet run that turns into a rivulet that is 12 - 24 inches, with a depth of perhaps 4-6 inches. The pond is 8 - 10 feet deep in the middle, I think. The drainage pipe that is in the dam, where the erosion of the dam is occurring, empties into a wet area.

Lynn

On Aug 22, 2022, at 12:47 PM, Piaget, Amy <Piaget.Amy@countyofdane.com> wrote:

Hi Lynn,

I will have one of my staff reach out to you to get more information.

Thanks,

Amy Piaget
County Conservationist, Land Conservation Division
5201 Fen Oak Drive #208, Madison, WI 53718
Cell: (608) 212-9172 | website | pronouns: she/hers

-----Original Message-----

From: Hilbert, Hans <hilbert.hans@countyofdane.com>

Sent: Monday, August 22, 2022 11:27 AM

To: 'Lynn Pitman' <lpitman@gmail.com>

Cc: Piaget, Amy <Piaget.Amy@countyofdane.com>; Diehl, Curt <Diehl@countyofdane.com>

Subject: RE: Primrose township - Farm pond dam reconstruction questions

Lynn,

At the County level it might make the most sense to start by working with the staff at Dane County Land and Water Resources, as the Land Conservation division is often involved with similar project. I'm copying Curt Diehl and the County Conservationist, Amy Piaget, who may be able to provide some guidance. From a County permitting perspective, because the pond was created from a waterway it is considered navigable and subject to shoreland zoning regulations. Obtaining a shoreland zoning permit will not be difficult to repair the embankment as long as any disturbance is to be revegetated.

Since this is a navigable waterway it is also subject to State regulations through the Wisconsin DNR, I would imagine they will require an engineered plan as part of their dams and floodplain permitting process.

Hopefully this gets you connected to the right folks,

Hans

-----Original Message-----

From: Lynn Pitman <lpitman@gmail.com>

Sent: Friday, August 19, 2022 12:54 PM

To: Hilbert, Hans <hilbert.hans@countyofdane.com>

Subject: Primrose township - Farm pond dam reconstruction questions

Hans,

My husband, Chris Johnson, and I own property at 1410 State Rd 92, in the town of Primrose. Chris has owned the property since 1973. A pond was on the property, and had recently been built, probably in 1971 or 1972.

The area around the drainage pipe in the dam has significantly eroded. Several trees and undergrowth have grown up along the dam embankment, further degrading the dam. The dam needs to be replaced soon.

We have been talking sporadically to a couple of engineering firms about the project. We've hesitated, because cost estimates are substantial, and also include costs for consulting and permitting work. I would like to find out more specifically what we as landowners can do ourselves, and whether there are other resources for some of the upfront work for permitting and planning, as well as for the actual excavation and rebuilding work.

The previous owner, Ames Austin, mentioned that the pond was built in the last year of a federal cost-sharing program. We don't have information on what program that might have been. One of the people from JDS consulting said that it was very similar to other NRCS erosion control dams that were built at that time, and the field abutting the pond was put into CRP when that program became available in the several years thereafter. As far as we understand NRCS has no record of the project, but I'm not sure if the right questions have been asked of the right people.

It would be extremely helpful to set up a call with you to discuss how Dane County handles situations like this, and what kind of permitting is required.

Thank you very much.

Lynn Pitman
608-712-1793 (cell)

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