

Stormwater Utility Charge  
Appeal  
Cottage Grove Annexation  
Gausmann Lands

City of Madison Board of Public Works Meeting

Wednesday, October 6th, 2021

# Legal Standards

- Under MGO Sec. 37.05(4)(a) and (b), the City has determined that, in the interest of the health, safety and welfare of the public, that all lots, lands and premises served or benefited by the City's stormwater system shall be charged for stormwater services.
- The City apportions the stormwater charge based upon total lot area, impervious area and pervious area.
- Under Sec. 37.05(4)(c), City Engineering determines the total area, impervious area, and pervious area of a parcel. Property owners may submit additional information for consideration.
- Under Sec. 37.05(4)(c), a property owner may appeal the measurements of the City Engineer to the Board of Public Works.

# Legal Standards, Cont.

- Under MGO Sec. 37.05(4)(d), the City may give property owner credits and make certain adjustments to the measured impervious and pervious areas.
- Property owners may submit documentation to the City Engineer that more accurately determines or reflects the total area, impervious area and/or pervious area. The City Engineer may reduce the measurements after taking into consideration:
  - The volume or peaking of stormwater or surface water discharge that is caused by the area of impervious surfaces, topography, and other surface characteristics; and,
  - The extent and reliability of mitigation or treatment measures that demonstrably and materially reduce treatment, conveyance, construction or mitigation costs to the Stormwater Utility.
- It is the burden of the property owner to demonstrate by a preponderance of the evidence that a fee adjustment and/or credit is warranted.
- By ordinance, any such adjustments and/or credits shall be made in accordance with the Rate Adjustment and Credit Policy.

# Legal Standards, Cont.

- The City's current Rate Adjustment Policy was approved by the Board of Public Works on March 2, 2011 and adopted by the Common Council on March 15, 2011 (RES-11-00213, File No. 20850).
- Under Section 4.0 of the Policy, if the customer does not accept the City Engineer's determination regarding a rate adjustment application, the customer may request a rate adjustment hearing before the City of Madison Board of Public Works.
- An appeal to the Board of Public Works proceeds under MGO Sec. 37.13.
- Under Sec. 37.13(1)(c) the Board may, in conformity with the provisions of Chapter 37, reverse or affirm, wholly or partly, or modify the order, requirement, decision or determination appealed from and may make such order, requirement, decision or determination as ought to be made, and shall have all the powers of the officer from whom the appeal is taken.

# Steve Gausmann Appeal

- Based upon discussions with Mr. Gausmann, City Engineer reviewed area calculations of the parcels and the applicability of the City's credit policy to the parcels.
- On July 22, 2021, City Engineering informed him that it reviewed the area determinations and the credit policy. Modifications were not made to the total area, impervious or pervious areas, but wetland credit was granted to one parcel based upon the City's approved Rate Adjustment and Credit Policy.
- Mr. Gausmann provided a notice of appeal to the City Engineer on August 8, 2021.
- Appears to be arguing both that:
  - City's measurements are wrong
  - City didn't apply the credit policy properly

# Review of current SWU Credits Reduction Options

- Following the approval of the annual budget for the Storm Water Utility by the Common Council, the City Engineer shall allocate the operating and capital costs to the following categories:
  - **Customer Charge**. This category shall be for those costs relating to the calculation, processing, and collection of the bills to customers to recover the cost of the service, including interest and depreciation.
  - **Water Quality Improvements**. This category shall represent the cost of services related to water quality, including street cleaning, regulatory permitting, and the development and construction of facilities and practices to remove pollutants from storm water or from the receiving lakes and streams, including interest and depreciation.
  - **Shoreline Protection**. This category shall include those costs, including interest and depreciation, to protect the shorelines of lakes and streams from erosion.
  - **Storm Water Conveyance System**. This category shall include those costs to maintain, repair and construct the public stormwater system, including interest and depreciation, excepting those costs attributed to the previous categories.

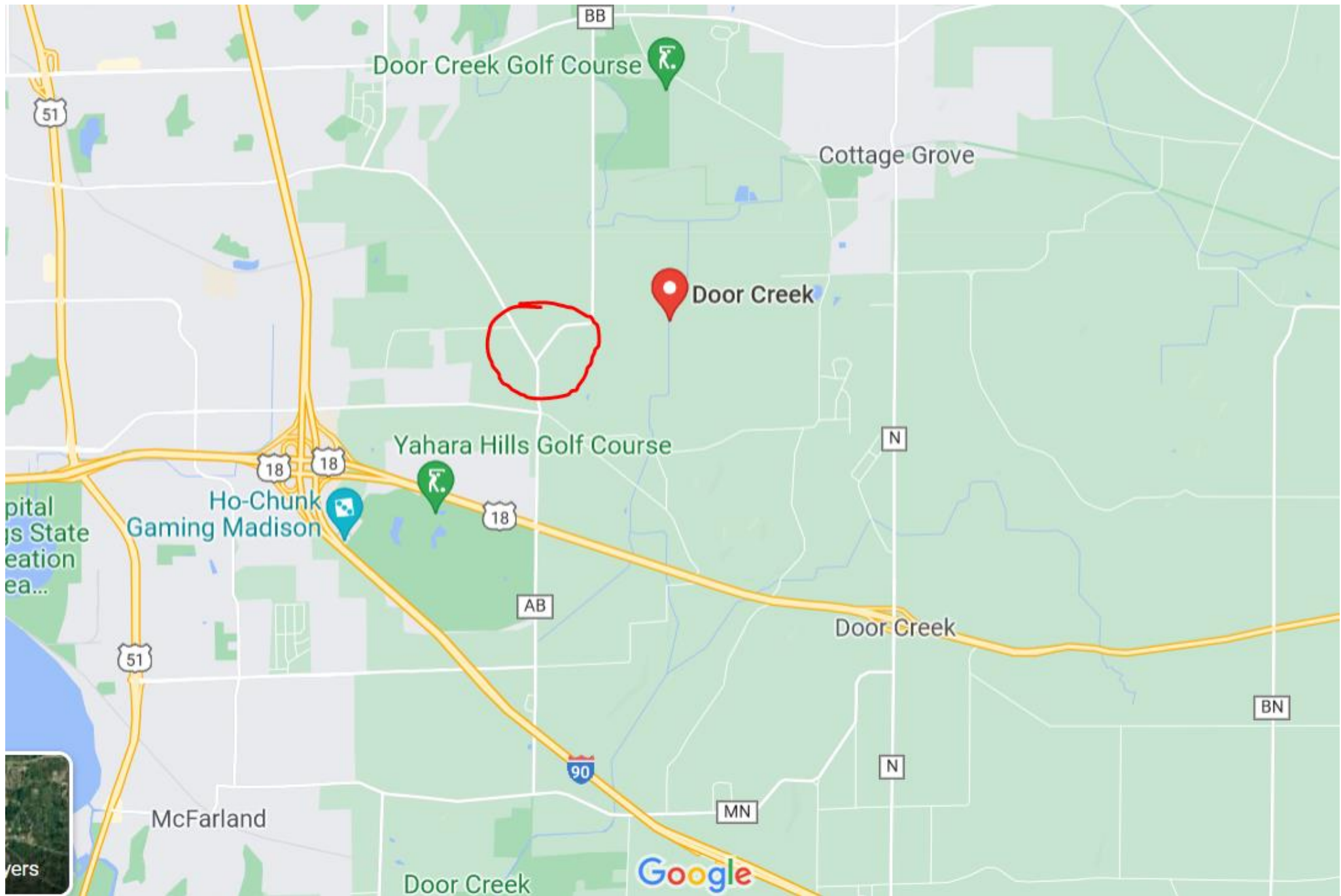
# Review of current SWU Credits Options

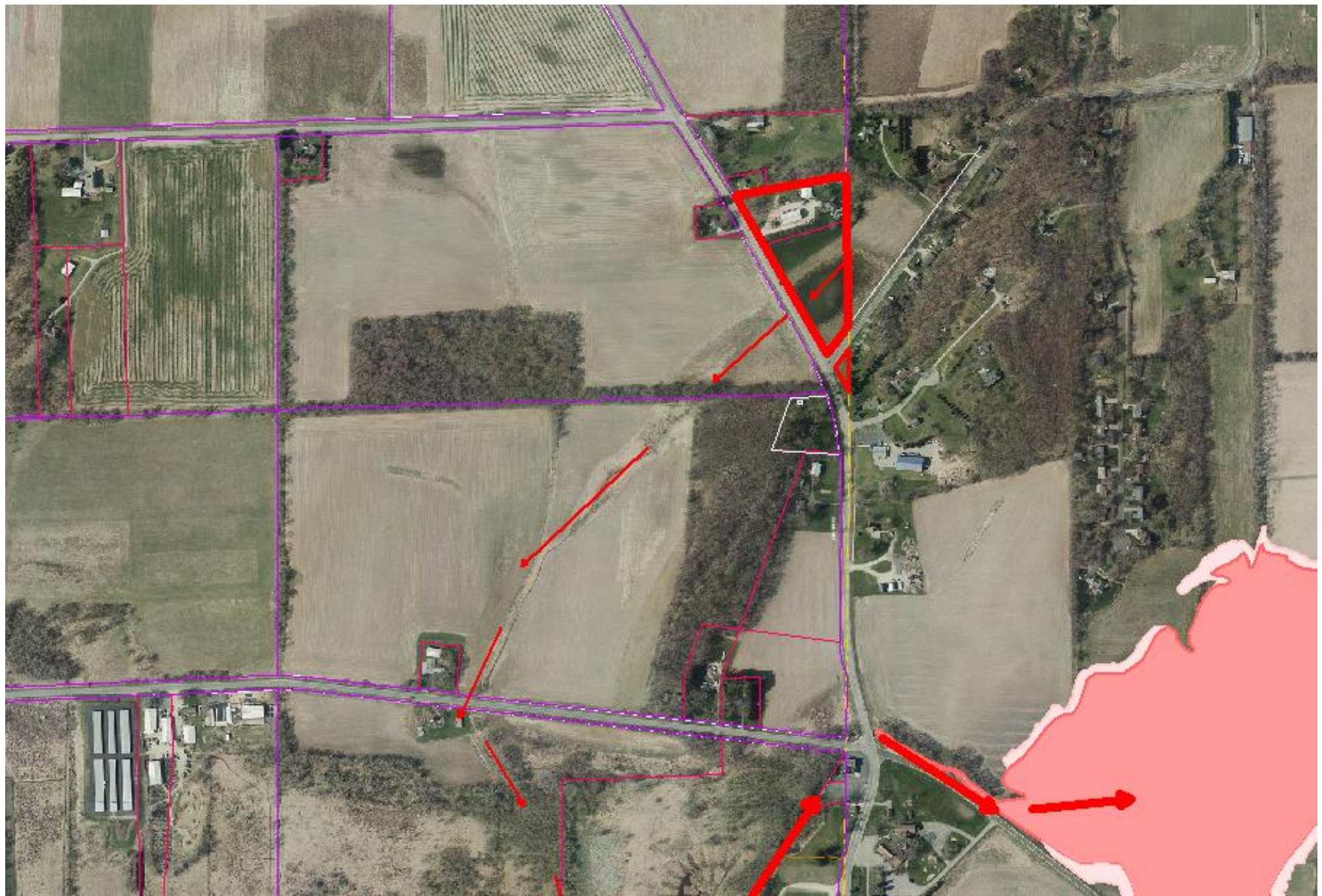
- Reduction for direct drainage to Lakes Wingra, Mendota, Monona, Yahara River, Wingra Creek, Nine Springs or Starkweather Creek. Reduction for the conveyance charges (in 2021 this is a 60.36% reduction in billable area)
- Reduction for no discharge to the storm sewer system in the 10 year event – reduction for the water quality and shoreline protection charges (in 2021 this is a 63.57% reduction in billable area).
- Reduction for active agricultural lands – reduce parcel size to 5 acres (including all impervious)
- Reduction for Wetland – the area of the wetland is divided by 2 and removed from the billing area.
- Reduction for Conservation Lands – areas that are actively managed as prairie or other types of conservation lands may provided engineering calculations to reduce their area charges based on both conveyance and water quality (for 2021 the baseline is a 27.8% reduction in pervious area for prairie and 24% for forested lands).

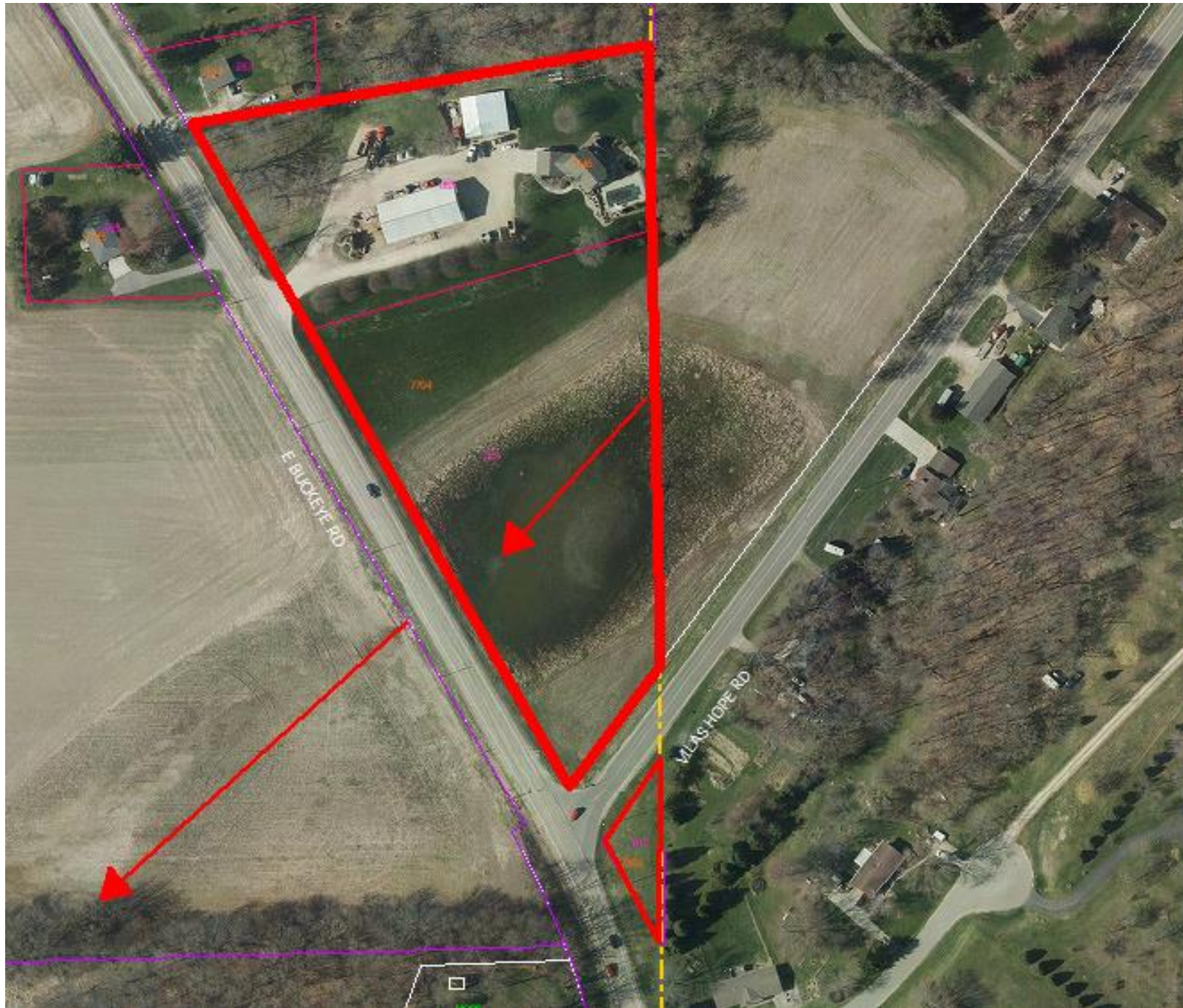
# Timeline:

- 2020 – December– Blooming Grove lands attached to the City of Madison (the “South Phased Attachment”)
- Approximately March 29, 2021 – Mr. Gausmann contacts City Engineering to voice objections to the Stormwater Utility Fees in addition to the annexation process and other parts of being part of the City.
- May 24, 2021 – City Engineering issues a retroactive wetland credit for Mr. Gausmann’s one property.
- Contacts and phone calls continue with Mr. Gausmann approximately monthly with Mr. Gausmann unhappy with the credit we issued and wanting the bill eliminated until July 20<sup>th</sup> .
- Final determination of the City Engineer issued on July 22, 2021.
- Notice of Appeal filed by Mr. Gausmann on August 8, 2021.
- On August 9<sup>th</sup> City Engineering received a request for information from the Public Service Commission regarding an appeal that Mr. Gausmann had filed with that agency regarding our SWU fees.











# Surface Water Data Viewer

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Home Layers



# Current Property Credits

- 7646 E Buckeye Road – No credits
  - 70,269 SF of pervious billed
  - 37124 SF of impervious billed
- 7704 E Buckeye Road – 144685 SF of pervious gross
  - Wetland credit – 75869 SF
  - 106750 SF of pervious billed
  - No impervious billed
- 7802 E Buckeye Road – No credits
  - 7532 SF of pervious gross/billed
  - No impervious billed

# Response to Reasons for Appeal

- City's measurements of the parcels are accurate. No contrary information has been provided.
- It is Engineering's opinion that we have applied the current credit policy as adopted by the Common Council on 3/15/2011.
- It is possible that as a result of a revised and updated policy that Mr. Gausmann and others recently annexed may be entitled to additional credits. However, staff cannot implement a proposed policy in absence of CC and BPW approval.