

Public Comments received via “Ask Us, Tell Us”

October 23, 2012

Name: Claire and Olvi Mangasarian
Address: 6021 Old Middleton Road, Madison, WI 53705
Date: 10/20/2012
Subject: Contact Water Utility Board
Message:

As 44-year owners of a flawless water well that has served us reliably and allowed us to keep our property well maintained, we respectfully urge the Water Utility Board to allow us to continue operating our well as long as we still own our house and to be able to pass it on to future owners. Not allowing us to do so and requiring us to connect to the city water system, now or when we sell our house, would impose a heavy and unnecessary financial burden on us during our old age.

**COMMENTS ON DRAFT REVISIONS TO MGO 13.07 AND 13.21 RELATING
TO PRIVATE WELL PERMITTING AND THE RESIDENTIAL CONNECTION
REQUIREMENT.**

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DRAFT: This document should be treated as a working draft. Comments are welcome.

Comments refer to the document identified as “Draft Residential Connection and Well Permitting Ordinance Amendments (10/18/12)” that was distributed with the Water Utility Board Agenda for the Meeting scheduled for 10/23/12.

OVERVIEW

This document contains revisions regarding the draft ordinance regarding the Private Well Program in the City of Madison, Wisconsin.

The most fair and just approach would be to put back in place the ordinance that existed prior to the changes that were made in December 2012. That ordinance served the citizens of the city well.

To respect the time of the reader and to remove the possibility that comments might be misinterpreted, the comments favor brevity over pleasantries.

COMMENTS ON 13.07

1. **13.07(2)(d). Remove “sale or transfer of property.”** No public policy goal is achieved (human safety, etc.) for having the connection requirement in place upon transfer of real estate, especially since only safe wells will be operating in the city. Keep in mind that a real estate transfer of a home served by a private well could occur quite

soon—within days of the passage of the ordinance—and the costs of connection can be quite high. Connection requirement upon sale could disrupt real estate transfers, which could negatively impact the retirement plans of law-abiding citizens. Note that if left in place, the ordinance would require connection requirements for homes served by code compliant (meaning they meet standards for groundwater protection) and for wells that exceed State Standards for water quality safety (because the draft city ordinance places testing requirements that are above and beyond State requirements). This places an unnecessary financial hardship on a lot of people, especially people who are retiring with debt against their homes in an era of declining property values. Eckhardt has received emails about the financial burden of requiring connection upon real estate transfer.

2. **13.07(2)(d). Annexed properties should be treated the same as existing properties.** This is an issue of basic fairness.
3. **13.07(2)(e). Discretion of General Manager.** As currently written, the General Manager/Water utility has too much discretion. For example, the general manager “may order a delayed connection” is too vague in light of recent events. Section should be rewritten so that General Manager is required to grant delayed connection if well is safe.
4. **13.07(2)(e). Expiration of delayed connection.** The duration for the delayed connection for all residences should be permanent, as long as the well is safe. If the period is not permanent, the GM can force wells to be abandoned by setting the "period of time" to be quite short. For example, the GM can grant a delayed connection, but specify the "period of time" to be a short period of time (e.g., 30 days) and at the end of the 30 days, the owner would be required to connect their residence to the city system, and the owner would not have the ability to appeal the connection requirement, because they had been granted the "delayed connection". This can't really be fixed by setting a minimum connection period for a "period of time" less than infinite, because it seems likely that the GM would use the minimum connection period stated in the ordinance to sunset all residential private wells in the city. Given requiring a connection requirement for a perfectly safe well is poor public policy, this

section should be written to enable homes to be served by perfectly safe wells, until wells are no longer safe.

5. **13.07(2)(g) Appeal of Connection Requirement.** Time to appeal should be at least 90 days. People are often out of town for a month or more for work. Resident Eckhardt only had one week to appeal as he was out of town at a conference.
6. **13.07(2)(g) Appeal of Connection, communication of procedures.** If the water utility does not have an appeal process available on the city web site, the property owner should automatically be granted the appeal. This was a big issue for Eckhardt. Eckhardt was ordered to follow procedures that did not exist, which dramatically increased his legal costs. The ordinance should require the utility to have procedures in place BEFORE ordering citizens to comply with directives. This is one way of accomplishing this objective.
7. **13.07(2)(h) 1. Failure to connect.** Change deadline to 90 days, for reasons above.
8. **13.07(2)(h)2. Financing.** Note that this will not help those property owners who are forced to connect upon real estate transfer. This is another reason for removing the requirement to connect upon real estate transfer.
9. **13.07(2)(i). Connection rebate.** This is wise given the policy goals of the Water Utility. I suggest that you have the Water Utility estimate the internal rate of return for paying 100% of the connection costs to figure out the maximum size of the rebate. The maximum size should be set at the internal rate of return—or cost of capital—used for project assessment by the utility. I suspect this amount is greater than the \$2,000 that is currently in the draft ordinance. Note that current customers benefit if the internal rate of return is positive, as positive IRR projects defray the overall costs of service for all customers.

COMMENTS ON 13.21

1. **13.21(5)(b)1. Application and Permit Fee.** Either a cap on the fees should be in the ordinance, or guidelines should exist regarding how the fee should be set. For example, the fee charged for the permit must not exceed the costs of private well program. If a cap is not set, the general manager could set the fee to be unfairly high. Given fines are specified in the ordinance, it seems reasonable that the fee be set in the ordinance as well.
2. **13.21(5)(b)2. Clarity on policy.** Change “Madison Water Utility may grant” a well operation permit to “will grant”.
3. **13.21(5)(b)5. Termination of permit.** Change from termination at point of sale, to termination of permit 60 days grace period after sale. This acknowledges the fact that the transfer of property can be a hectic time, and that it makes sense to give property owners time to have wells tested and permitted after a real estate transfer. Note that current draft ordinance makes it very difficult for new owner to proactively get a permit before the real estate transfers, and it makes no sense to secure a permit prior to transfer, as transaction might fail until it occurs.
4. **13.21(5)(c)(2)a. Testing.** As written, water utility has the power to require any test it wishes, at any frequency. This section should give owner right to appeal excessive testing to the water utility board.
5. **13.21(5)(c)(3). Inspection upon transfer of property.** This section of the ordinance contains language that draws the Water Utility into the real estate transfer process for properties that are served by private wells. Transferring real estate is a high stakes, very complicated, deadline intensive process. It often involves out of state buyers. We already have a process that works quite well to address all aspects of home construction and home safety, including wells, structural issues, asbestos, gas lines, and electric systems. Many of these systems are quite dangerous, such as gas and electricity. The system we currently use involves private home inspectors, and it works quite well. Involving the MWU in real estate transfers is likely to create a lot of problems especially since this is not something the water utility has experience with. Given our interactions with the MWU to date, we suspect that if this provision

remains, the MWU will disrupt several real estate sales--intentionally or unintentionally--at great cost to property owners. Taking this out of the ordinance seems prudent, especially since only safe, code compliant wells, will be operating in the city.

6. **13.21(5)(d) Appeal Deadline.** Extend deadline to appeal to 90 days, to provide reasonable accommodation to citizens who travel for a variety of legitimate reasons, including work, or for those families grappling with other life issues such as health.
7. **13.21(5)(e). Revocation of Permit.** Section should include right for citizen to recover costs if determination that well posed “serious hazard to the health or safety of the public” is determined to have been incorrect.
8. **13.21(7). Well Abandonment Rebate.** Section should compute rebate at 100% of costs up to ceiling that generates positive payback (or internal rate of return) for the Water Utility. See comments on “connection rebate” above.
9. **13.21(8)(c) Remedy from order. To reduce costs and to reduce conflict,** property owner should have ability to appeal order of general manager under this section to the Water Utility Board before applying to circuit court.

COMMENTS ON OVERALL ORDINANCE

All non-emergency deadlines in the ordinance should be at least 90 days or greater. Citizens of this city travel, and they also at times deal with life issues—such as cancer in the family. The ordinance should acknowledge these aspects of regular life for the citizens of our city, and the water utility should happy welcome an ordinance with deadlines that respect the lives of the citizens.

The ordinances and the permitting process are complicated and hence other loopholes might exist. We will work on coming up with suggestions that will yield a simpler process.

SUMMARY

Overall, the most fair, safe, cost effective policy would be to include an incentive for homeowners to connect to the city water system for amounts where the payback is positive for the utility and city, and allow residences to continue to be served by private wells as long as the wells produce safe water.

This approach properly balances the costs and benefits of the private well program, and respects the rights of a minority of citizens who are in no way harming the health and safety of anyone else.