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*"Moving Toward The Future With Values From The Past"*

March 28, 2009

Ms. Dawn Thompson, Associate Planner  
Chicago Metropolitan Agency for Planning  
233 South Wacker Drive, Suite 800  
Chicago, IL 60606

via Fax and U. S. Mail

Re: Grand Prairie Sanitary District  
Settlements of LaFox  
Creation of an additional waste water treatment plants  
Mill Creek Water Reclamation District FPA

We are providing public comment on the proposal by the Developers of the Settlements of LaFox, in Kane County, Illinois, who have applied to the Chicago Metropolitan Agency for Planning (CMAP) for an Amendment of the Illinois Water Quality Management Plan which would authorize the Grand Prairie Sanitary District to provide water and sanitary sewer treatment service to the Settlements of LaFox. The application to CMAP does not appear to include the request to waive their prior application to connect to the existing facilities of the Mill Creek Water Reclamation District (District).

In the Introduction to "Strategic Plan for Water Resource Management," CMAP, formerly known as NIPC, states that "[we] can continue to be a region in which abundant water sustains a strong economy, a high quality of life, and a healthy environment. But we will not accomplish this without persistent, coordinated effort." From this mantra flows the CMAP planning philosophy. Persistent, meaning a consistent readily understood approach; and coordinated effort meaning the same approach is taken in analyzing the proposal. In this regard, CMAP has supported orderly development in the Counties in its region, which includes Kane County.

One major way that orderly development is achieved is through CMAP's support of the Illinois Environmental Agency's facility plan review authority. By encouraging regional wastewater treatment facilities, strategic planning can begin to shape new development in the outlying areas. This approach has been the consistent one taken by CMAP in recommending new wastewater systems be approved by



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the IEPA. Regional facilities prevent the proliferation of numerous package sewage treatment plants. This has always been viewed by CMAP as a good thing. In its coordinated effort to keep the rivers and streams of northeastern Illinois clean and free of pollution, CMAP has always recognized that managing and controlling larger regional wastewater systems is less problematic than trying to operate numerous smaller sewage treatment plants.

Therefore, CMAP has historically recommended that new residential developments connect to existing wastewater treatment facilities where possible, and especially where the new development occurs in the existing wastewater system's facility planning area. This has allowed for the orderly expansion, financing and planning of regional wastewater facilities. In addition, the expanded regional system is easier to administer, manage and operate because the structure is already in place. It also provides for stronger and more financially viable sanitary districts, as their user base is expanded.

In keeping with this CMAP requirement and philosophy, as the developer of the Mill Creek Development and the Mill Creek Waste Water Reclamation and Reuse Facility we were responsible for the creation of the first truly Green Friendly, Waste Water Treatment Plant through the use of Land Application in Kane County some 15 years ago. The intention of this system was not only to create an environmentally friendly waste water treatment plant within the unincorporated area of Kane County, or to be ecologically friendly to the waterway known as Mill Creek, but to also create an expandable system to serve other property owners and developments that may occur beyond the limits of the Mill Creek Planned Unit Development (PUD). This was done all in accordance with Kane County's Comprehensive Plan and with Northeastern Illinois CMAP's review, approval and subsequent expansion of the Facility Planning Area (FPA).

Although, the Mill Creek land application system may not have needed an FPA in the early 1990s, after the 1989 rules for land application were issued, one was obtained. This cooperative work to serve others through creation and expansion of the system has been tried and proven by the Developer, the governmental body supervising the Sanitary District known as the Mill Creek Water Reclamation District (District), as well as CMAP. All of these organizations have successfully taken the necessary steps through incorporation into the FPA, annexing into the sanitary district and then actually serving other properties outside the PUD such as the Geneva Public School's Bus Maintenance Facility located on the north side of Keslinger Road.

The District's services have also been offered to the homeowners' of the Christman's subdivision on Fabyan Parkway, Richardson Electronics on Keslinger Road, and Perrenial Pleasure on Bartelt Road. Kane County engineering staff and the District's engineers continue to require us as the developer to provide sewer and water stubs at the perimeter of the PUD development to allow for future connections and continued expansion of the services such as at the ends of Cox Lane, Patricia Lane, Palmer Road and Chadsworth Drive even though the developer does not own the property that abuts the ends of these streets. This is typical in most cities and villages and is simply providing for good, responsible and orderly planning and growth within the unincorporated areas of Kane County that are in keeping with sound practices. This spirit of cooperation continues as we and the District are currently working with two new property owners that have requested service by the District.

With this cooperative spirit, on April 11, 2006, almost 3 years ago, Sho-Deen entered into a Utility Services Agreement (Agreement) with both Wyndham Deerpoint and Foxford LLC to provide sanitary sewer service and water supply to the proposed Settlements of LaFox Development. This Agreement is of public record and was recorded against the subject property on May 23, 2006.

Kane County subsequently approved the zoning of the Settlements of LaFox property relying upon the information that this property would be served by the Mill Creek Water Reclamation District. At the request of both Foxford and Wyndham Deerpoint and in accordance with the Agreement we have completed, deeded to the Mill Creek Water Reclamation District and paid to extend not only oversized utilities for the Settlements of LaFox but to also expand the treatment facility for the proposed development with anticipation of reimbursement from Foxford and Wyndham developers of Settlements of LaFox.

CMAQ, the Illinois Environmental Protection Agency (IEPA) and the District have all reviewed, approved, permitted and accepted the expansion of the FPA, the oversized treatment facility and the oversized utilities for Settlements of LaFox. The current rate payers of the District are currently responsible for the maintenance of this oversized system and oversized piping network in anticipation of the additional rate payers to come from the Settlements of LaFox proposed Development.

On March 3, 2009, we were informed in writing by Foxford LLC that;

*"...The Owners (Foxford) and the District had for some time pursued good faith negotiations to reach a mutually acceptable annexation agreement. Unfortunately, despite considerable efforts by the Owners and the District, the District notified the Owners on July 15, 2008 that it was no longer interested in pursuing the annexation agreement proposed by the Owners. Although the Owners have assessed alternative approaches for consummating an annexation agreement with the District, we have finally concluded that no such agreement can be reached."*

This position raises several immediate concerns to us and deserves a review by CMAQ:

1. Does this action by Foxford restrict Wyndahm from being served by the District, or will a portion of the Settlements of LaFox be served by the Mill Creek Water Reclamation District and another portion be served by a separate sanitary district?
2. If this was the position of the Mill Creek Water Reclamation District Board, was it based on some unacceptable proposals put forward by Foxford that the Mill Creek Water Reclamation District could not accept due to the hardship it may place on its rate payers?
3. We have no confirmation that the Mill Creek Water Reclamation District Board did in fact review, discuss and vote on such action as described by Foxford.

The Grand Prairie Sanitary District leads one to believe that after being created many years ago, they have been practicing good governance. They have filed an application as if they are an active operating governmental body and sanitary district. Tim Kellogg, applicant and indicated General Manager of the Grand Prairie Sanitary District is also an employee of the developer, Foxford LLC.

To our knowledge the Kane County Board, who is responsible for appointing board members to this governmental body, never took any such action. Board members are normally required to reside within the district boundaries. We do not believe that this has occurring either. We do not believe that the Grand Prairie Sanitary District is truly in fact a legal operating entity. We question if the sanitary district has ever filed any financial operating budgets or ever been audited by an independent public auditor. If they have not been an effective operating governmental body to date, how could one expect Kane County to formally accept financial responsibility for a system managed by this body as required by point #3 of CMAP's review consideration? The Grand Prairie Sanitary District application to CMAP requests to provide 3 treatment plants within the proposed Grand Prairie Sanitary District. Is CMAP prepared to not only watch over the Grand Prairie Sanitary District but to also watch over three new treatment plants and accept financial responsibility for the treatment plant?

Municipalities throughout Kane County and the State of Illinois demand that developers work within the established FPA's and work with the established Sanitary Districts. They do not support the creation of new districts when two organizations cannot resolve a negotiation. The underlying suggestion is to allow this developer to create or renew a defunct sanitary district and construct three new facilities even though there is a proven, ready, willing and able sanitary district to serve the developers and developments needs. To our knowledge the Mill Creek Water Reclamation District does NOT support this application and they are the sole operator within this FPA. Thus, this application does NOT meet the requirements of point #6 of CMAP's Review Consideration.

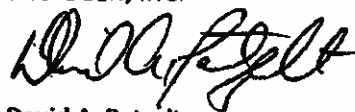
If this is the direction that the CMAP will permit this developer to move forward on, the CMAP should fully understand the need for such a new organization and why the District and the Owner are not able to reach an amenable solution to the annexation.

Further, we raise question to CMAP if this is a change in direction from Northeastern Illinois Comprehensive Plans and do they want a proliferation of sanitary districts and proliferation of facilities to manage and oversee? This clearly WILL adversely affect adjoining units of government specifically the Mill Creek Water Reclamation District, thus NOT complying with CMAP's Review Consideration #7.

Finally, we understand that the developer may be requesting Federal Dollars though economic stimulus funds to construct such a facility. CMAP needs to be aware that these are the same dollars that the District may be requesting or could use to further expand the existing Mill Creek Waste Water Reclamation and Reuse system. CMAP should encourage the developer to coordinate with the District their efforts in steering these funds to the District that is currently ready, willing and able to serve Foxfords needs. We encourage CMAP to deny this application for amendment.

Sincerely,

SHO-DEEN, INC.



David A. Patzelt

**CC: Phil Bus, Executive Director; Kane County  
Tim Kellogg, P.E. Grand Prairie Sanitary District  
Kent W. Shodeen**