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October 2, 2020

Via E-mail

Dawn Vick
Incorporation Review Board
101 East Wilson Street
P.O. Box 1645
Madison, WI 53701
wimunicipalboundaryreview@wi.gov

Re: Village of Wrightstown's Written Submittal Opposing the Town of Wrightstown's Petition to Incorporate Greenleaf

Dear Chairperson Vick:

Characteristics of the Territory (s. 66.0207(1)(a), Wis. Stats.)

The Petitioners have raised valid points in that many communities grow over time and have different areas within them that serve different purposes. The only way a community can be sustainable long-term is to have a diversity of land uses that serve different functions. However, based on state statutes, reasonable homogeneity is required for an area to incorporate. That is simply not the case with the proposed boundaries of Greenleaf. As we have presented in both Incorporation Review Board (IRB) meetings, the stark, obvious, and ubiquitous differences between the Hamlet of Greenleaf and the Ledge do not meet the homogeneity requirement.[1]

The most glaring of these differences is between areas served by public water and sewer in comparison to areas served by private well and septic. In the September 22nd IRB meeting, the point was raised by the Petitioners that the Village of Wrightstown also has areas within its boundaries that are not served by public sewer and water. This is true. However, in comparison to the proposed Village of Greenleaf, the Village of Wrightstown has 7% (approximately 200 acres) of land within its municipal boundaries not within its existing sewer service area. In

[1] Attached PDF is Village of Wrightstown's PowerPoint information presented at hearing.

comparison, the proposed Village of Greenleaf has 58% (approximately 350 acres) of land within its proposed municipal boundaries not within its existing sewer service area. While the statutes do not require a comparison of existing incorporated municipalities and unincorporated areas attempting to incorporate, the difference between the two could not be more extreme.

Additionally, the Petitioners stated in the September 22nd IRB meeting that the Census Designated Place was not a relevant boundary in judging the homogeneity of the proposed Village of Greenleaf, while we have stated that it provides another piece of evidence in the lack of homogeneity. The U.S. Census uses a set methodology to determine these boundaries, as stated below:

"Census designated places (CDPs) are statistical geographic entities representing closely settled, unincorporated communities that are locally recognized and identified by name. They are the statistical equivalents of incorporated places, with the primary differences being the lack of a legally defined boundary and an active, functioning governmental structure, chartered by the state and administered by elected officials." "A CDP constitutes a single, closely settled center of population that is named. To the extent possible, individual unincorporated communities should be identified as separate CDPs." "A CDP generally consists of a contiguous cluster of census blocks comprising a single piece of territory and containing a mix of residential, nonresidential, and commercial uses similar to that of an incorporated place of similar size."[2]

The Hamlet of Greenleaf is designated by the U.S. Census as a Census Designated Place, but the neighborhood on the Ledge is not part of it. Because of this, we believe that this designation should not be overlooked by the IRB in determining the homogeneity of the proposed boundaries of incorporation.

Further, the lack of transportation connections and access within and between the areas in the Hamlet of Greenleaf and the areas on the Ledge also proves the lack of homogeneity. Presently, there are two roads that connect these two areas, neither have bicycle or pedestrian transportation connections, accessibility, or infrastructure in place. Moreover, within the Hamlet of Greenleaf, there is a state bicycle trail, sidewalks, pedestrian crossings, and extended shoulders for bicycle traffic. In the neighborhood along the Ledge, none of these features exist.

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[2] Source: https://www.federalregister.gov/documents/2018/11/13/2018-24571/census-designated-places-cdps-for-the-2020-census-final-criteria

Finally, the Town of Wrightstown's Comprehensive Plan presents countless inconsistencies with actual development practices, the Petitioner's application, and only further exacerbates the issue of future development not being compact, dense, or developed on public water and sewer. In all reality, incorporation of this non-homogenous boundary only promotes sprawl. As evidence, the Future Land Use Map shows massive, sprawling future development patterns along the entirety of STH 96 from the proposed Village of Greenleaf to the Village of Wrightstown. In fact, a new subdivision along this corridor has recently been developed on private well and septic in a non-compact or dense development pattern less than a mile from Greenleaf's wastewater treatment facility. Further, by the Petitioner's own admission, the characteristics of the Hamlet of Greenleaf and the neighborhood along the Ledge serve two different functions and have significantly different land use patterns. As stated throughout the Comprehensive Plan, the Town wishes to protect its rural identity, promote compact development in Greenleaf, and limit exurban, private well and septic development. However, following incorporation there will be little stopping the new Village of Greenleaf from growing along the Ledge, furthering large lot, sprawling development on private well and septic.

In total, as the Intervenor in this incorporation petition, we do not believe that the proposed Village of Greenleaf meets the homogeneity requirements as written in the state statutes with the boundaries as proposed. Additionally, the incorporation petition does not meet the density requirements for the territory beyond the most-dense half square mile (discussed further below). However, as the Petitioners have documented throughout the process, the area will continue to grow, develop, change, and evolve over time to eventually meet the requirements in the future. The IRB should consider these factors in its upcoming decision and instead of granting incorporation at this time, wait until Greenleaf meets all of the requirements to become an incorporated municipality.

Territory Beyond the Core (s. 66.0207(1)(b), Wis. Stats.)

The Petitioners have requested a waiver from the IRB for the existing quarry along STH 96 citing the Town of Lisbon incorporation case. However, the facts of the Town of Lisbon case do not apply to Greenleaf's incorporation application. In Greenleaf's case, the quarry divides the Hamlet from the area known as the Ledge. This creates two distinct communities. Additionally, the Town of Lisbon case applied to an area in Metropolitan Milwaukee, which could not be more different from the Town of Wrightstown and proposed Village of Greenleaf in terms of population density, development patterns, infrastructure, land uses, and growth areas. Another case cited by the Petitioners in their written submittal is the Town of Bloomfield which requested a wavier for natural resource features (wetlands). Again, citing that case is not relevant to the proposed Village of Greenleaf because the waiver in Bloomfield was for wetlands. We agree

with the IRB decision that natural resource features should be permanently protected from development and thus waived from the density requirements. However, a man-made quarry is not even remotely the same situation. As such, the quarry land should be included in the density calculations and applied to the statutory standards. Overall, waiving the quarry for the Village of Greenleaf to meet the statutory requirements for density beyond the most-dense half square mile will effectively be setting a new precedent in which all future incorporation petitions can reference, cite, and leverage. For this reason, the IRB should deny this waiver request and recommend the Petitioners reapply when they can meet the standards without a waiver.

It should also be noted that the Petitioners utilized a singular planning approach to determine the boundaries of the proposed Village, in addition to attempting to meet the density requirements. In planning, best practice is a balance of qualitative and quantitative information utilized to make sound decisions, plan for the future, and develop policies. As the Petitioners stated in their written submittal and at the September 22, 2020 IRB meeting, planning is a science that blends qualitative and quantitative information. However there is no evidence that any quantitative approach was taken. Instead, individual opinions guided the development of the incorporation boundaries and the most-dense half square mile boundaries. This is one approach, but it does not yield the best results. The IRB should consider the fact that while there was an opportunity to consider, utilize, and integrate quantitative analysis in the incorporation petition, it was not. This is not only evidenced in the lack of homogeneity, but also in requesting the waiver for the quarry because the Petitioners do not meet statutory requirements.

Tax Revenue (s. 66.0207(2)(a) Wis. Stats.)

In the September 22nd IRB meeting, the Wisconsin Department of Administration's presentation pointed out significant weaknesses in the financial planning associated with the Petitioner's application. This cannot be ignored. In particular, the glaring omission remains that the Petitioners did not account or plan for needed planning, zoning, and other ordinance costs. While these costs may not be astronomical in comparison to utilities or infrastructure, they do play a role in financial planning for a new village. The cost for a new zoning ordinance alone could be upwards of $50,000. Additionally, the lack of due diligence in even consulting with Brown County on the need for a new Shoreland Ordinance points to the fact that the proposed Village of Greenleaf is not looking to pursue good planning practices in the future. Instead, through assumptions, they are planning to move ahead in the manner that they always have. This does not sound like an incorporated municipality that is ready to govern itself effectively today or in the future.

Over the past few years, the Wisconsin Department of Natural Resources has increased its regulations on local wastewater treatment. This is directly related to phosphorous and other contaminants seeping into the ground water supply. In fact, throughout the state the issue of providing and maintaining clean drinking water and properly treating wastewater is becoming more and more prevalent. The Petitioner's approach to financial planning for the needs of a new village is well documented as minimal at best. This presents long-term sustainability issues and lack of foresight.

In total, the Petitioners have a financial plan for the proposed Village of Greenleaf, but if incorporation takes place, the additional costs associated with the new layer of government that have not been accounted for will need to be addressed somehow. More than likely, this will come from increasing taxes on property owners who have been told that incorporation will not increase their taxes or increasing municipal debt that could jeopardize the long-term sustainability of the proposed Village.

Impact on the Remainder of the Town (s. 66.0207(2)(c), Wis. Stats.)

The impact of this incorporation will be harmful on the remainder of the Town. Town residents currently have the option to annex to the Village of Wrightstown and utilize the municipal sewer and water services provided by the Village of Wrightstown. If this incorporation is granted, the Town of Wrightstown residents located near the Village of Wrightstown will no longer have options regarding their land once the proposed Village of Greenleaf and the remainder Town consolidate. Currently, farmland near the Village sells for approximately $15,000 per acre. If a property owner adjacent to the Village of Wrightstown wants to sell land for development, the sale price for this land increases to approximately $35,000 to $40,000 per acre. Once the proposed Village of Greenleaf and remainder Town of Wrightstown consolidate, this land will return to the value of $15,000 per acre because Town residents will have lost the opportunity to sell their land for development in the Village of Wrightstown. The recent growth in the Town of Wrightstown can be attributed to its location next to the Village of Wrightstown. If this incorporation is approved, that growth in the remainder of the Town will be severely limited because there will be no access to municipal sewer and water, other Village infrastructure, and Village-level services.

Impact on the Metropolitan Community is Applicable Based on Wisconsin Statutes and Case Law

Based on previous submittals to the IRB, Wisconsin Statutes, and case law, the Village of Wrightstown contends that impact on the metropolitan community should be considered in

determining the incorporation of the proposed Village of Greenleaf. This incorporation, if approved, will prohibit job growth in southern Brown County and would be a terrible urban planning decision for the region.

Wisconsin Statutes Section 66.0207 states as follows:

66.0207 Standards to be applied by the board.

(1) Requirements. The board may approve for referendum only those proposed incorporations which meet the following requirements:
   (a) Characteristics of territory. The entire territory of the proposed village or city shall be reasonably homogeneous and compact, taking into consideration natural boundaries, natural drainage basin, soil conditions, present and potential transportation facilities, previous political boundaries, boundaries of school districts, shopping and social customs. An isolated municipality shall have a reasonably developed community center, including some or all features such as retail stores, churches, post office, telecommunications exchange and similar centers of community activity.
   (b) Territory beyond the core. The territory beyond the most densely populated one-half square mile specified in s. 66.0205 (1) or the most densely populated square mile specified in s. 66.0205 (2) shall have an average of more than 30 housing units per quarter section or an assessed value, as defined in s. 66.0217 (1) (a) for real estate tax purposes, more than 25 percent of which is attributable to existing or potential mercantile, manufacturing or public utility uses. The territory beyond the most densely populated square mile as specified in s. 66.0205 (3) or (4) shall have the potential for residential or other urban land use development on a substantial scale within the next 3 years. The board may waive these requirements to the extent that water, terrain or geography prevents the development.

(2) Additional considerations. In addition to complying with each of the applicable standards set forth in sub. (1) and s. 66.0205 in order to be approved for referendum, a proposed incorporation must be in the public interest as determined by the board upon consideration of the following:
   (a) Tax revenue. The present and potential sources of tax revenue appear sufficient to defray the anticipated cost of governmental services at a local tax rate which compares favorably with the tax rate in a similar area for the same level of services.
   (b) Level of services. The level of governmental services desired or needed by the residents of the territory compared to the level of services offered by the proposed

village or city and the level available from a contiguous municipality which files a certified copy of a resolution as provided in s. 66.0203 (6).

(c) Impact on the remainder of the town. The impact, financial and otherwise, upon the remainder of the town from which the territory is to be incorporated.

(d) Impact on the metropolitan community. The effect upon the future rendering of governmental services both inside the territory proposed for incorporation and elsewhere within the metropolitan community. There shall be an express finding that the proposed incorporation will not substantially hinder the solution of governmental problems affecting the metropolitan community.

History: 1977 c. 29; 1983 a. 189 s. 329 (14); 1985 a. 297 s. 76; 1999 a. 150 s. 38; Stats. 1999 s. 66.0207; 2003 a. 171; s. 35.17 correction in (1) (title), (2) (title).

The delegation of legislative power under sub. (2) (d) is constitutional. The legislature stated the general purpose with sufficient clarity that it can be determined that it is the legislature's will and not that of the administrator [now board] that is served by following consideration guidelines enumerated in subs. (1) and (2). Westring v. James, 71 Wis. 2d 462, 238 N.W.2d 695 (1976).

The requirement of homogeneity seeks to assure that an incorporated area is urban rather than rural, that development in such an area is not scattered, fragmented, or haphazard, and that similar land uses are grouped together in appropriate municipal boundaries. Pleasant Prairie v. Department of Local Affairs and Development, 113 Wis. 2d 327, 334 N.W.2d 893 (1983).

That the department approved annexations that helped create fragmented town borders did not render arbitrary and capricious the department's determination that the town's proposed incorporation did not meet the requirement of homogeneity and compactness. Incorporation of the Town of Pewaukee, 186 Wis. 2d 515, 521 N.W.2d 453 (Ct. App. 1994).

Whether incorporation would benefit the proposed village area is not the standard for allowing incorporation. An area must meet all the requirements of subs. (1) and (2). Walag v. DOA, 2001 WI App 217, 247 Wis. 2d 850, 634 N.W.2d 906, 00-3513.

The statutes and case law state that all standards must be met (see highlighted text above). The Wisconsin Court of Appeals stated, "It is well established that in order to qualify for incorporation, an area must meet all six statutory requirements set forth in 66.016 (1) and (2). *Walag v. Wisconsin Department of Administration*, 247 Wis. 2d 850, 915 (Ct. App. 2001) citing *Redford v. DOD*, 186, Wis. 2d 515, 521 (Ct. App. 1994). The Court in the *Walag* case further states, "The department may dismiss an incorporation petition if it determines that one of the six requirements was not met." Id. At 523. In this case, at a minimum, the Petitioners fail to meet the statute requirements for characteristics of the territory (1)(a), territory beyond the core (1)(b), impact on the remainder of the town 2(c), and the impact on the metropolitan community(2)(d).

Sincerely,

LAW FIRM OF CONWAY, OLEJNICZAK & JERRY, S.C.

By: _____
Robert R. Gagan

RRG:plh
Enclosure
3538859_4

Wisconsin State Statutes 66.0207(1)(a)

- **Wis. Stats. 66.0207(1)(a)** requires that the entire territory of the proposed village or city shall be reasonably homogenous and compact.
- This requirement is **not** met:
  - There are distinct differences between the core area traditionally known as the Hamlet of Greenleaf vs. the area beyond the core comprised of mostly residential areas along the "Ledge"
- Why have such criteria for incorporation if such clear-cut and drastic differences are acceptable?

	Hamlet of Greenleaf	The "Ledge"
Physical Distance (from edge of Hamlet to "the Ledge")	0.4 Miles	0.4 Miles
Elevation Change (from edge of Hamlet to "the Ledge")	100'-150'	100'-150'
Land Use	Mostly Single-Family, with a mix of industrial, commercial, and multi-family	All Single-Family
Zoning	Mostly R-1, with some B-1 and I-1	Mostly A-R (Ag. Residential)
Average Residential Lot Size	0.8 acres	2.9 acres
Age of Housing Stock	Dates Back to Early 1900's	Dates Back to Early 2000's
Average Residential Property Value	$143,264	$286,464
Utilities	Mostly serviced by public water and sewer	All private well and septic
Census Designated Place	Mostly within the CDP for Greenleaf	Not within the CDP for Greenleaf
Community Center Locations	All community Center locations	None of the community center locations

Source: Brown County GIS, U.S. Census, Google Maps, Greenleaf Incorporation Application, Town of Wrightstown

Nearly 0.5 miles
Fair Rd
Fair Rd
Fair Rd
Fair Rd
Greenleaf Acres
Mobile Home Park
Deuster Rd
Deuster Rd
Taintor St
57
Cascade Dr
Klaus St
Ridge Royale Dr
Ridge Royale Dr
Brice's Custom Cabinetry
Cornette Farm Supply
32
BP
Mally's Spare Time
Slammer Inn Again
Flipper's Cove
96
Day St
96
Day St
Google

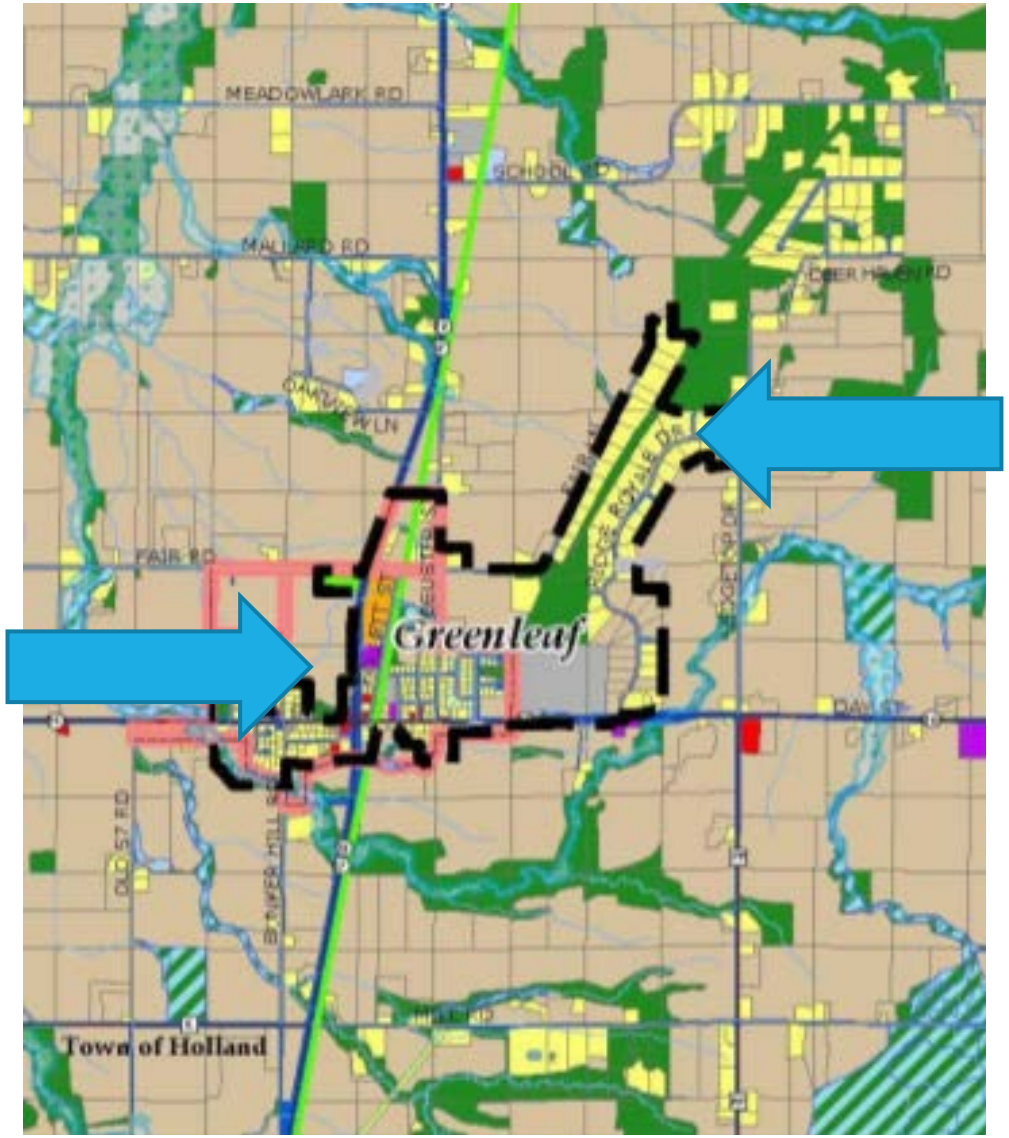
DISTANCE

ELEVATION

Between 100'-150' of elevation change
From Greenleaf

Between 100'-150' of elevation change
From The Ledge

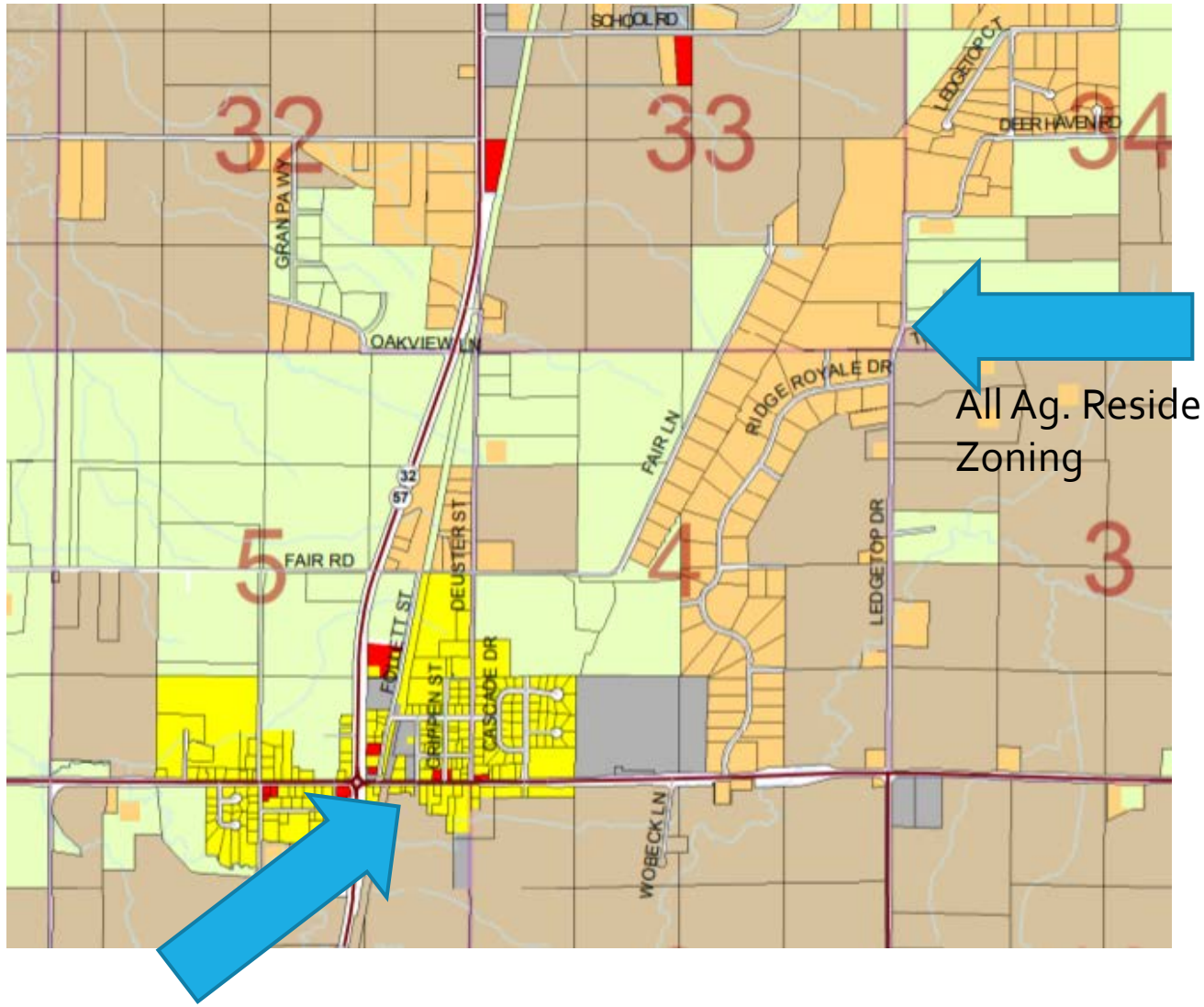
LAND USE



All Large Lot Single-Family Uses

Mix of Uses

ZONING

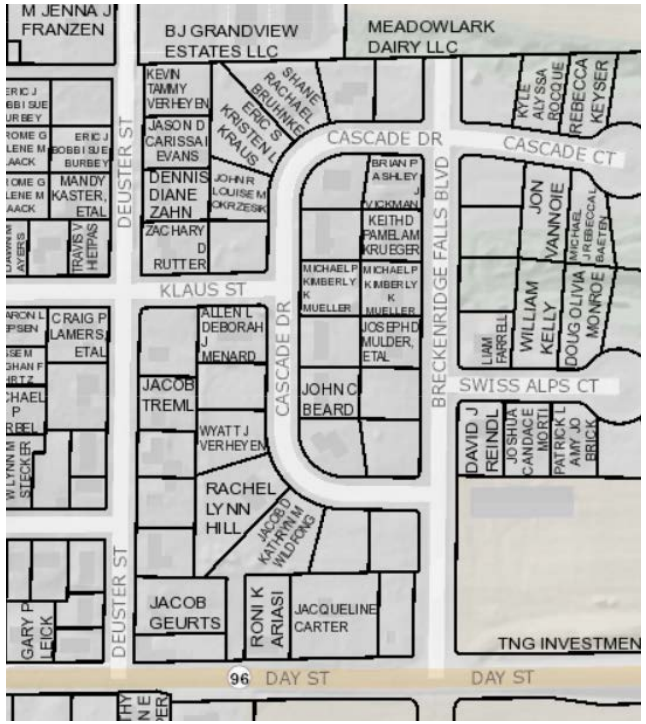


All Ag. Residential Zoning

Mix of Zoning Districts

AVERAGE RESIDENTIAL LOT SIZE

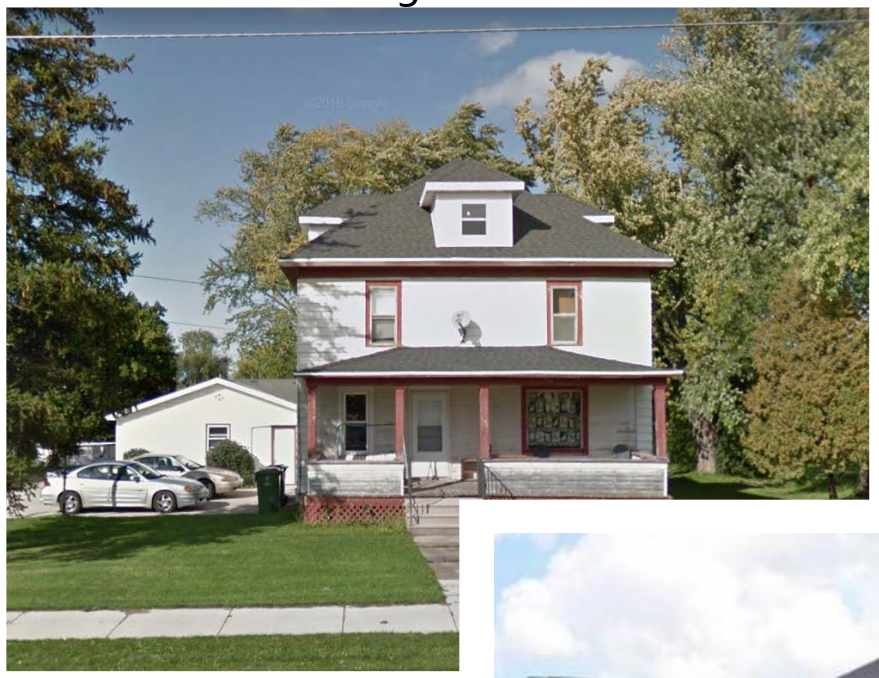
The Ledge = Average 2.9 Acre Lots



Greenleaf = Average 0.8 Acre Lots

AGE OF HOUSING STOCK

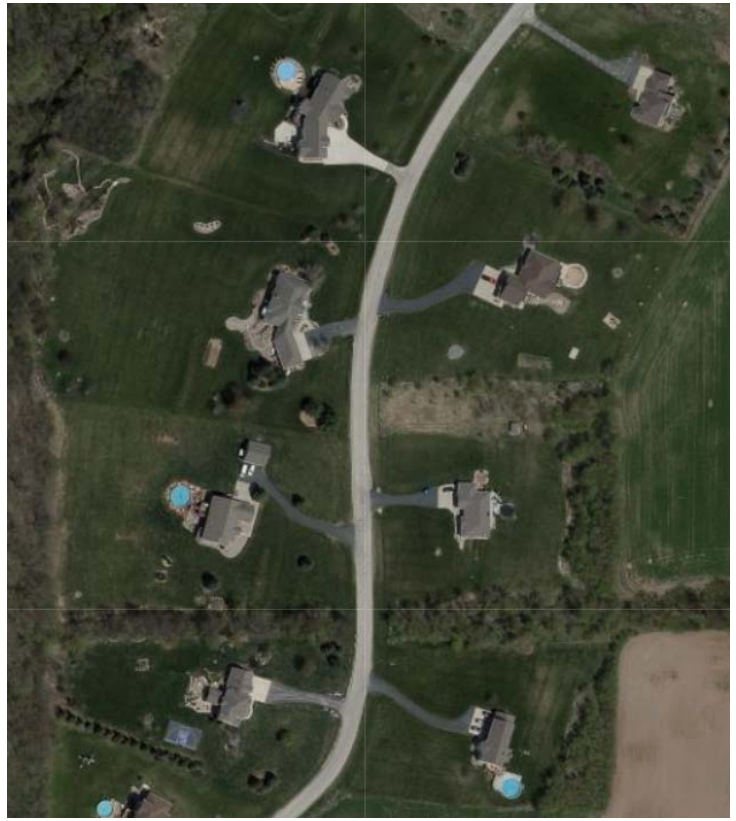
Greenleaf = Housing That Dates Back To Early 1900s



The Ledge = Housing That Dates Back To Early 2000s

AVERAGE RESIDENTIAL PROPERTY VALUE

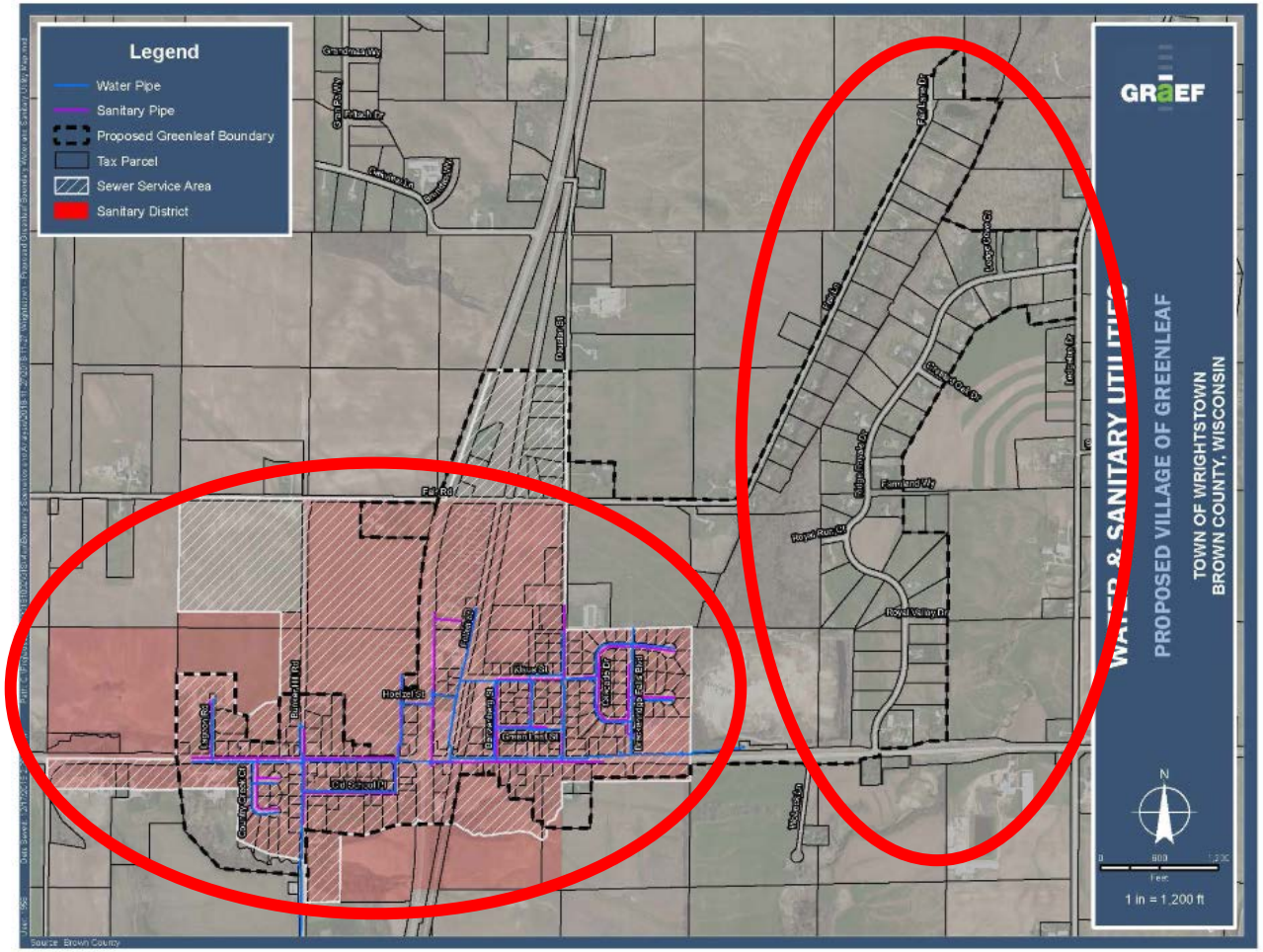
Greenleaf = Average Residential Property Value $143,264



The Ledge = Average Residential Property Value $286,464

UTILITIES

Served by Private Well and Septic

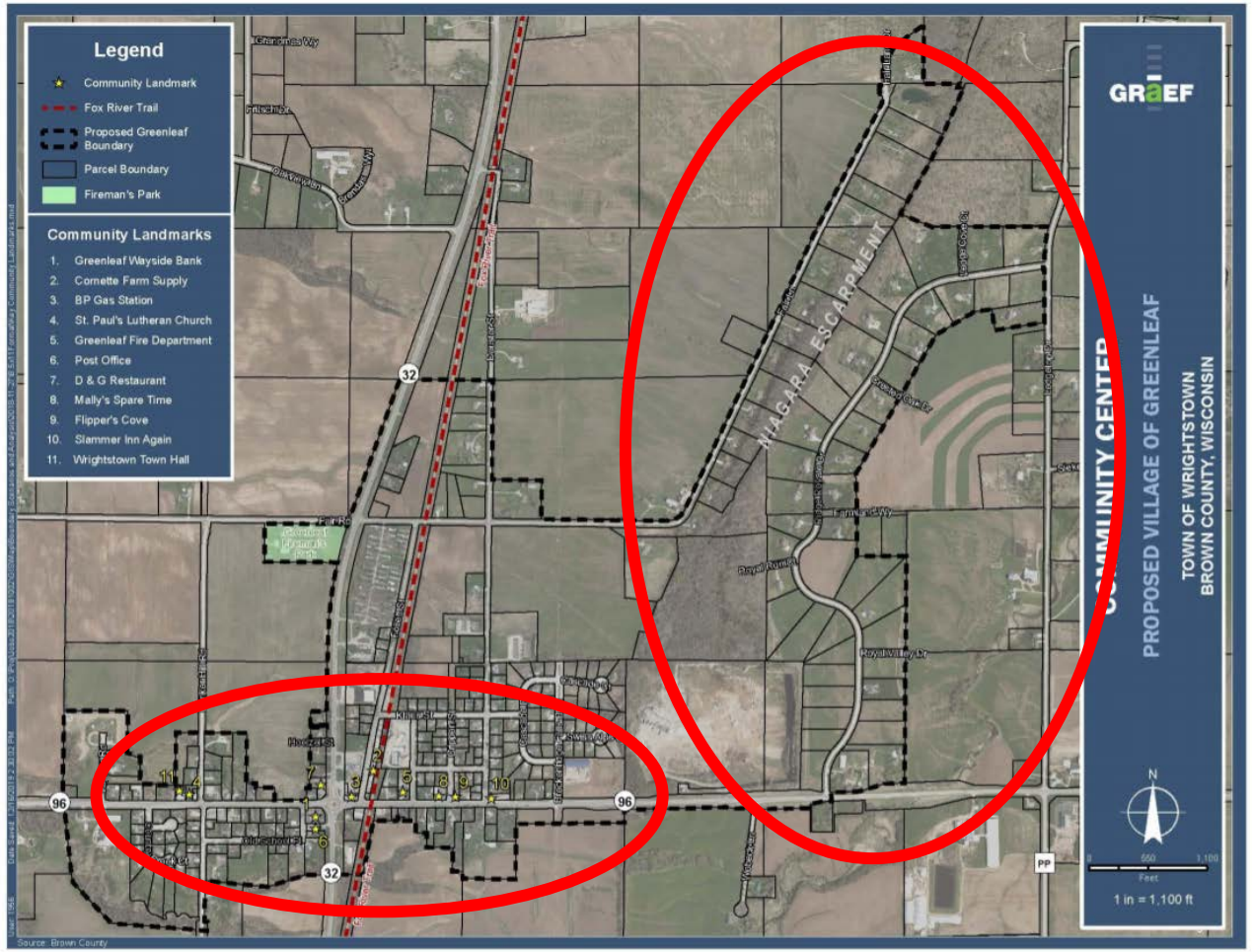


Served by Public Sewer and Water

CENSUS DESIGNATED PLACE

COMMUNITY CENTER LOCATIONS

None of the Community Center Locations



All Community Center Locations