

IN THE MATTER OF:

Case No. 87-CV-1532

The consolidation of the
Town of Pewaukee and the
Village of Pewaukee:

TOWN OF PEWAUKEE AND
VILLAGE OF PEWUKEE,

Petitioners,

v.

CITY OF WAUKESHA,

Intervenor,

and

HARRY BIELINSKI and
RUSSEL L. STEWART

Co-intervenors,

DETERMINATION OF THE

DEPARTMENT OF DEVELOPMENT

dated

SEPTEMBER 1, 1988

It is the function of the Department of Development to prepare findings and determination as to whether the territories petitioning for consolidation meet the applicable "Standards" perscribed in section 66.016 Wis. Stats. Having completed that task, the analysis and findings are attached.

In summary, it is the DETERMINATION of the Department of Development that when considering the petition submitted to the court by the Village of Pewaukee and the Town of Pewaukee that;

- Standard 1(a), requiring a finding that the "entire territory shall be reasonably homogeneous and compact," is not met, and
- Standard 1(b) requiring the "territory beyond the most populated square mile... shall have the potential for urban development on a substantial scale within the next three years," is not met, and
- Standard 2(a), requiring sufficient tax resources is met, and
- Standard 2(b), requiring a comparision of levels of services finds that areas south of I-94 could be better served by the City of Waukesha and therefore this standard is not met, and
- Standard 2(c), impact on the remainder of the town is not applicable, and

- Standard 2(d), requiring the Department to make, "an express finding that the proposed incorporation (consolidation) will not substantially hinder the solution of governmental problems affecting the metropolitan community" is not met.

Having failed to meet one or more applicable standards the Department finds that the petition shall be dismissed.

However, the Court may consider evidence regarding the STIPULATION AND ORDER, dated January 11, 1988, making reference to section 66.027 Wis. Stats. which at the Court's discretion may establish a new boundary between the Town of Pewaukee and the City of Waukesha consistent with the MOTION TO INTERVENE filed with the Court by the City of Waukesha.

If the Court decides in support of the resolution of "willingness to annex Town lands south of I-94", the Department recommends that a new petition for consolidation of the Village of Pewaukee and Town of Pewaukee be submitted.

All of the above is discussed in greater detail in the body of the DETERMINATION.

dated the 1st day of September 1988

Don Pokorski

Don Pokorski, Supervisor
Div. Economic Development
DEPARTMENT OF DEVELOPMENT

DP/tb

cc: The Honorable Harold J. Wollenzien, Circuit Judge
Dale W. Arenz, Attorney for the Town of Pewaukee
Timothy Garrity, Pewaukee Village Attorney
Curt R. Meitz, Waukesha City Attorney
Harold H. Fuhrman, Attorney for Intervenors
Elizabeth Williams, Clerk, Village of Pewaukee
Sandra Salbashian, Clerk, Town of Pewaukee
Thomas E. Neill, Clerk, City of Waukesha
Christine Luedtke, Clerk, Town of Waukesha
June Nirschl, Clerk, Town of Delafield
Audrey Carlson, County Clerk, Waukesha County
Claudine Setzke, Clerk, Town of Brookfield
Betty Fryda, Clerk, Town of Lisbon
Jeanne Ann Fredrickson, Clerk, Town of Merton
Gary Rasmussen, Clerk, City of Brookfield
Patricia Struve, Clerk, Village of Menomonee Falls
Bill Bowers, Clerk, City of New Berlin
Harry Bielinski, Co-intervenor
Russel T. Stewart, Co-intervenor
Barbara Whitmore, Clerk, Town of Genesee

CONSOLIDATION DETERMINATION

REGARDING THE PETITION

BY

TOWN OF PEWAUKEE

AND

VILLAGE OF PEWAUKEE

The following analysis and findings relate to the "Standards to be applied by the department," reference s.66.016 Wis. Stats.

SECTION 1 (a) "CHARACTERISTICS OF THE TERRITORY."

STANDARD TO BE APPLIED

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.

Natural Boundaries

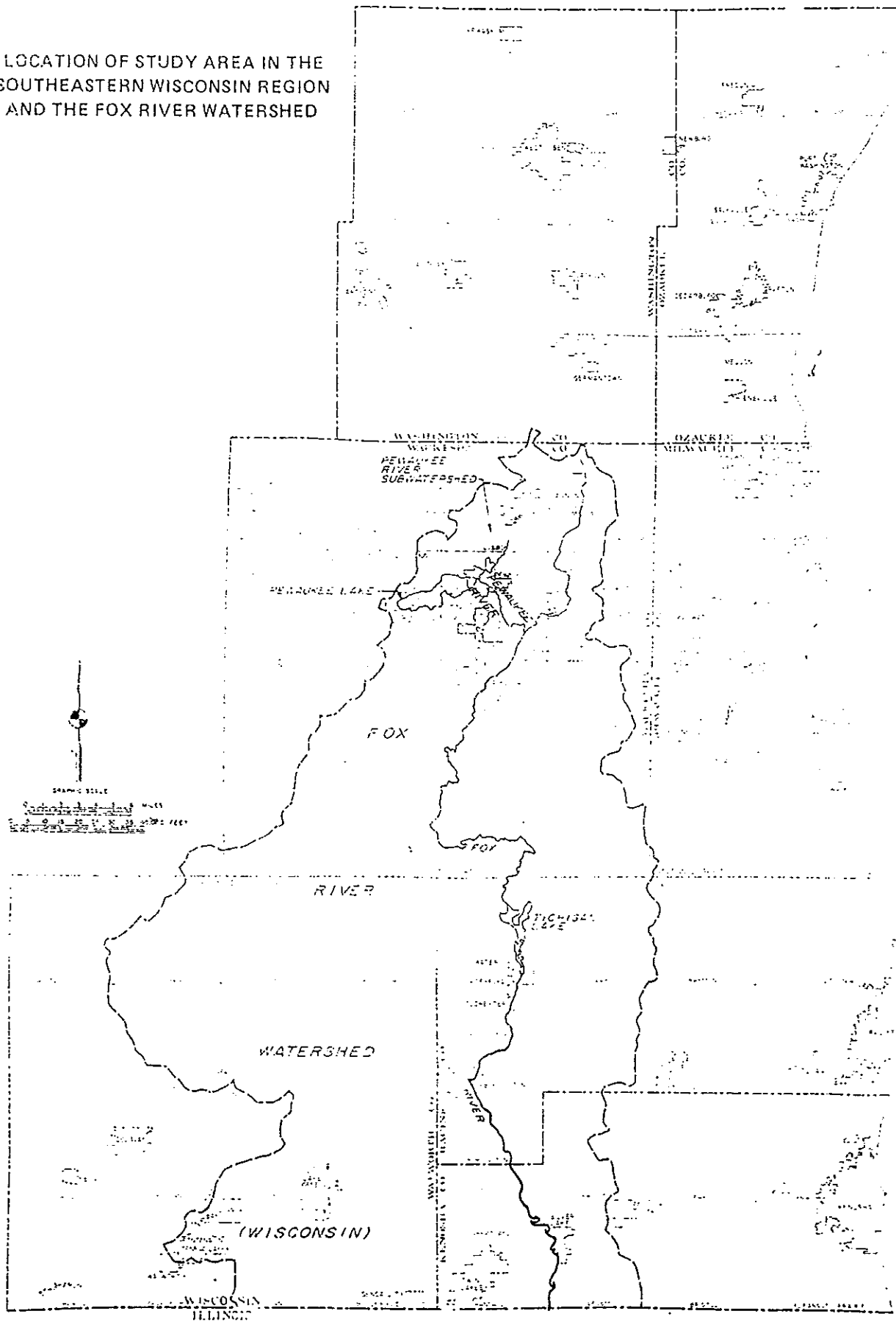
Pewaukee Lake, which lies in both Pewaukee, and Delafield Townships, is the scenic attraction and the historic focus of residential development, but also a physical barrier in respect to transportation routes. Town lands north of the lake are somewhat remote from the rest of the community and have few alternate routes for vehicular transportation. There are no other physical boundaries with possible exception of wetlands interspersed throughout the area as discussed below.

Natural Drainage Basin

The survey township is located entirely (refer to Figure 1) within the Upper Fox River watershed. The subwatershed boundaries found on Figure 2, further divide surface water drainage into several subwatersheds: Pebble Creek, which drains the lower southeast corner of the town, the Pewaukee River and Fox Rivers (both perennial water courses), and Sussex Creek (an intermittent stream which lies in the far northeast corner of the township.)

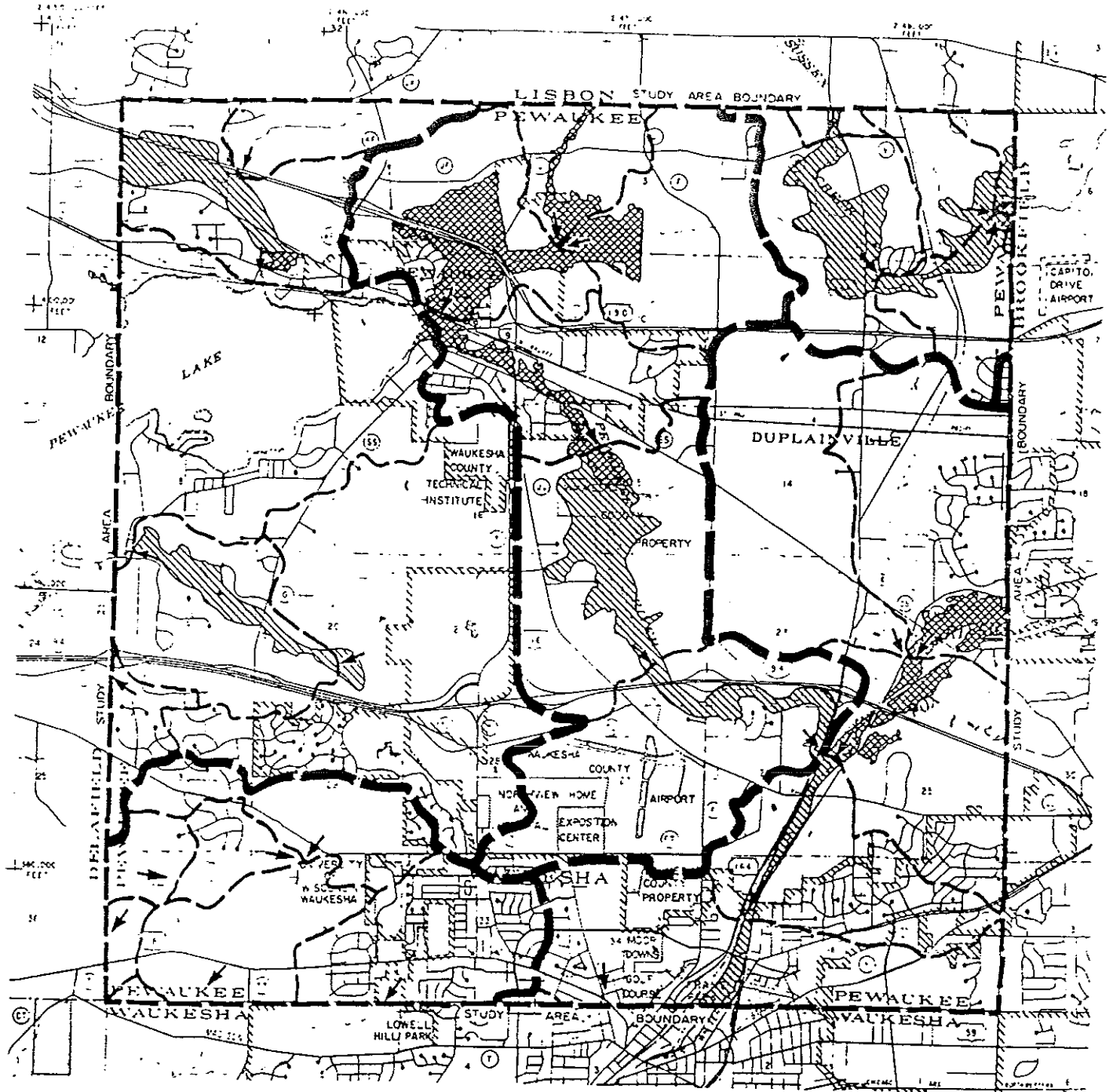
Figure 2 also delineates lowlands adjacent to the perennial and intermittent streams and rivers, which are statistically subject to 100 year recurrent interval flooding. These flood-prone lands were identified through two SEWRPC studies, A Comprehensive Plan for the Fox River Watershed, and Floodland Information Report for the Pewaukee River (SEWRPC Planning Reports 12 and 9, respectively). Within the unincorporated area of the town, additional lands subject to the 100 year flood plain, are also contained within the Waukesha County Shoreland and Floodland Protection Zoning Ordinance Zoning Map plotted on a photogrammetric base map (contained on

LOCATION OF STUDY AREA IN THE
SOUTHEASTERN WISCONSIN REGION
AND THE FOX RIVER WATERSHED










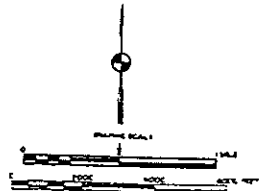
Source: SEWRPC.

SELECTED SURFACE DRAINAGE AND FLOODLAND FEATURES IN THE JOINT PEWAUKEE STUDY AREA: 1980



LEGEND

-  LAKE OR POND
-  PERENNIAL RIVER OR STREAM
-  100-YEAR RECURRENCE INTERVAL FLOODLANDS AS DELINEATED BY SEWRPC
-  100-YEAR RECURRENCE INTERVAL FLOODLANDS AS DELINEATED BY THE WAUKESHA COUNTY PARK AND PLANNING COMMISSION
-  SUBWATERSHED BOUNDARY
-  SUBBASIN BOUNDARY
-  DIRECTION OF SURFACE DRAINAGE FLOW



Source: SEWRPC.

eight sheets, adopted by the Waukesha County Board of Supervisors on July 22, 1986 and approved by the Wisconsin Department of Natural Resources (WDNR), August 13, 1986). The floodlands mapped by SEWRPC cover approximately 2,006 acres (9 percent) of the survey township, of which approximately 86 percent is within the unincorporated area of the township, and approximately 12 percent is within the Village of Pewaukee, and the remaining 2 percent in the City of Waukesha. If the additional lands covered by the county shoreland Floodland Ordinance were included, the total acreage amount would appear to be slightly increase.

The flood prone areas of the township are further described through WDNR Wisconsin Wetland Inventory program. The "Wisconsin Wetland Inventory Map" portrays wetlands inventoried by the WDNR, using the U.S. Fish and Wildlife Service "Classification of Wetland and Deepwater Habitats of the U.S.," soil survey maps, precipitation records and other information.

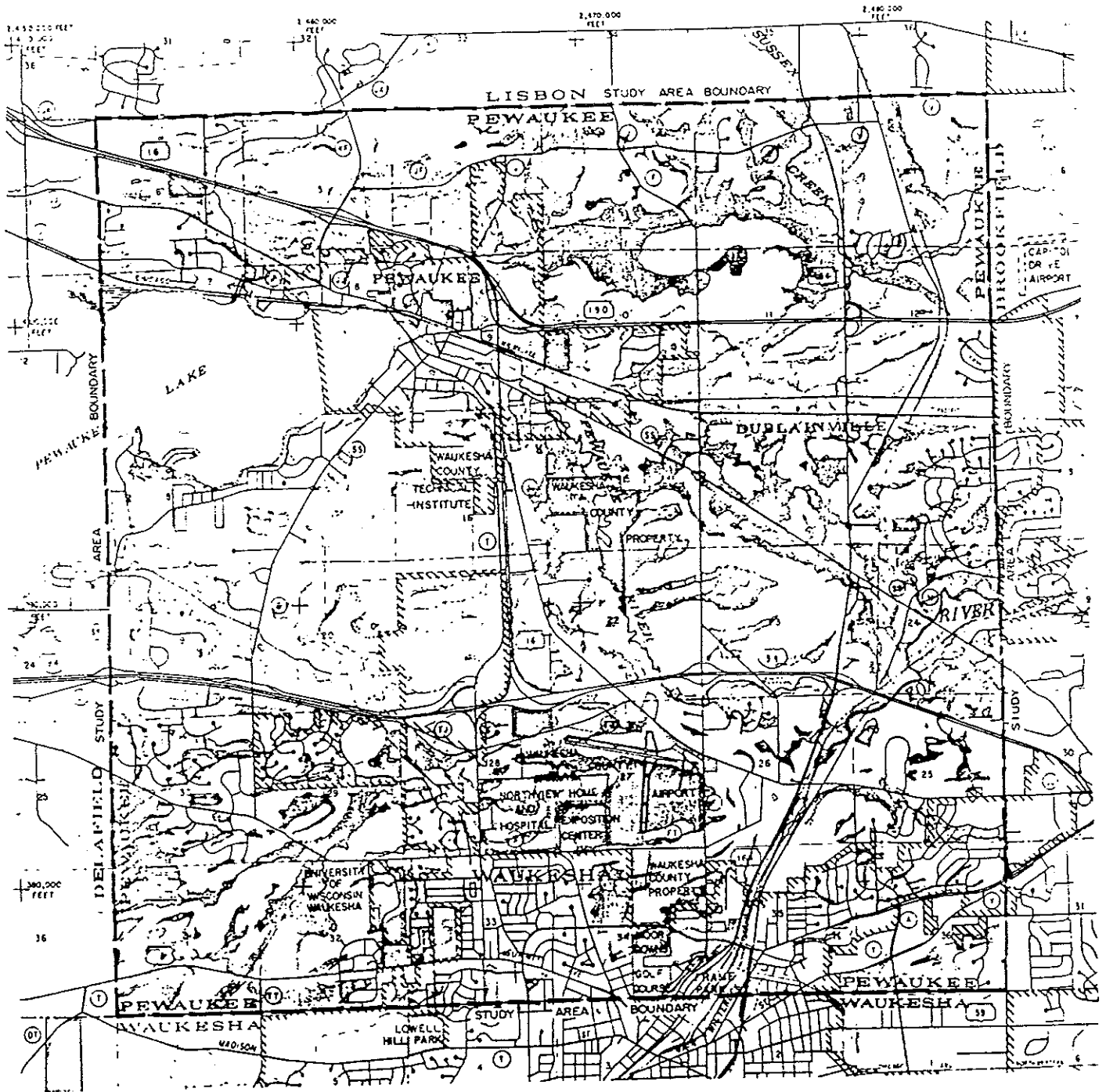
Soil Conditions

Pewaukee township soil and surface features result from the ground moraine of the Lake Michigan lobe of the final, or Wisconsin stage, of glaciation (which began 30,000 years ago, ending about 11,000 years ago). Examples of glacial landforms are the kettles (kettle holes and associated steep ridges and drainage ways) found in the southwest corner of the town; the drumlins elongated "cigar shaped" ridges (from a few hundred feet to over 2,000 feet in length); and large level or gently sloping "flats" where glacial run off has deposited sand, gravel and soil which, in some cases, trapped water to form lakes, marshes or bogs.

Fully, 42 percent of survey township are covered by soils portrayed in Figure 3 as having severe or very severe limitations for developments served by on-site soil absorption sewage disposal systems. Of course, Figure 4 describes not only areas which are wetlands and/or flood plains, that are protected from development by the Waukesha County Shoreland and Floodplain Zoning Ordinance, but also those soils which are either too shallow or too high to permit proper septic tank operation, or which create building foundation structural problems that may be economically difficult to overcome.

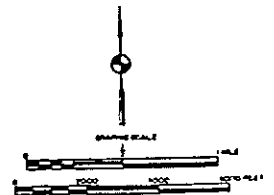
The Southeastern Wisconsin Regional Planning Commission has identified environmental corridors within the township taking into account soil conditions, slope, wetlands and flood prone areas. These areas are shown on Figure 5, Table 1 illustrates the associated acreage distributions within the township. These areas are considered to be undevelopable and permanent open space.

SOIL LIMITATIONS FOR RESIDENTIAL DEVELOPMENT ON LOTS ONE ACRE OR MORE IN SIZE SERVED BY ONSITE SOIL ABSORPTION SEWAGE DISPOSAL SYSTEMS IN THE JOINT PEWAUKEE STUDY AREA



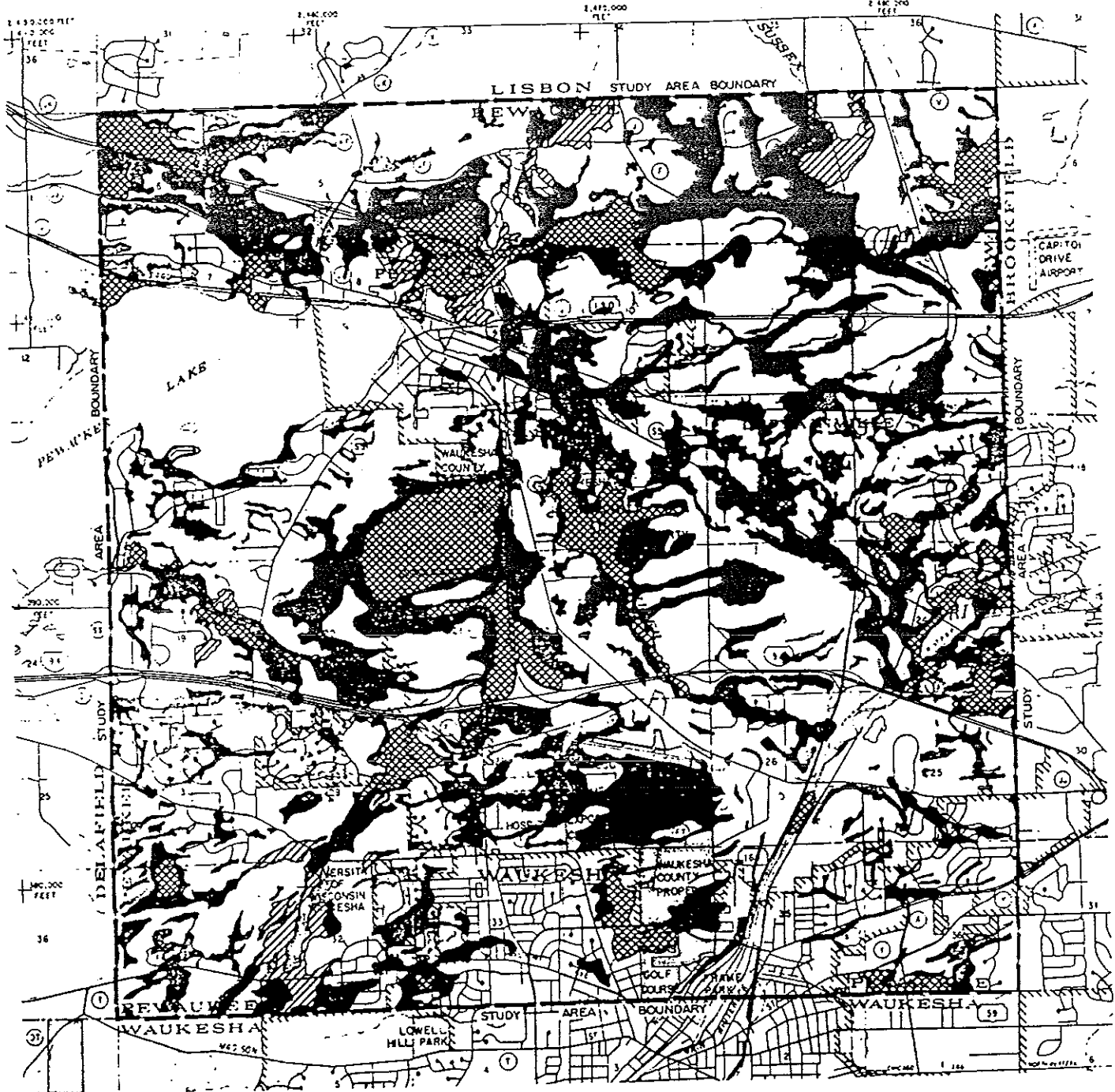
LEGEND

 AREAS COVERED BY SOILS HAVING SEVERE OR VERY SEVERE LIMITATIONS









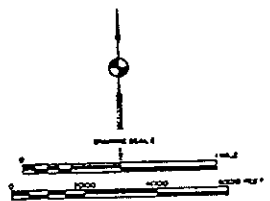
Source: SEWRPC.

SELECTED CHARACTERISTICS OF SOILS IN THE JOINT PEWAUKEE STUDY AREA



LEGEND

-  SOILS THAT HAVE A FLUCTUATING OR HIGH WATER TABLE OR ARE SUBJECT TO PONDING, OVERWASH, OR RUNOFF HAZARD
-  SWAMPS, MARSHES, ORGANIC MATERIALS, OR SOILS THAT ARE SUBJECT TO FLOODING OR OVERFLOW
-  SOILS THAT ARE UNDERLAIN BY SHALLOW BEDROCK OR IN WHICH FILTER FIELDS ARE SUBJECT TO SILTATION OR THE GROUNDWATER TABLE IS SUBJECT TO CONTAMINATION
-  SOILS THAT HAVE A SLOPE OF 12 PERCENT OR GREATER
-  SOILS THAT HAVE A SLOW PERMEABILITY RATE
-  OTHER SOILS



Source: SEWRPC.

Table 1
Distribution of Lands In Environmental Corridors
(In Acres)

	Primary Corridors	Secondary Corridors	Isolated Natural Areas	Total	Sq.Mi.
Town of Pewaukee	2,712	477	280	3,469	5.42
Village of Pewaukee	193	22	60	275	.42
City of Waukesha	457	0	62	519	.81
TOTAL	3,362	499	401	4,263	6.66

Present and Potential Transportation Systems

All areas of the town and village are accessible by a road system that includes every class of public road ranging from freeways to quiet residential streets. Interstate Highway 94 crosses the town in an east/west direction, dividing the township at approximately the lower one-third (approximately 12 square miles of the township are south of the highway and the remaining 24 square miles to the north).

Although I-94 has been characterized as a "barrier," there are six interchanges on I-94 and two bridge crossovers. Therefore, vehicular access to lands on either side of I-94 is at least if not more convenient, than crossing the Fox River within the City of Waukesha.

A second freeway, S.T.H. 16, branches off I-94 and runs north through the Village of Pewaukee and then northwesterly exiting the town in Section 6, north of Pewaukee Lake. There are three interchanges (in addition to the I-94 interchange) providing points of access to the Village of Pewaukee. Interchanges on this section of freeway provide ready cross-highway accessibility, with the possible exception of the 1.8 mile stretch between I-94 and the interchange providing access to the Waukesha County Technical Institute. The freeway bridges over Wisconsin Avenue (C.T.H. 55) and Hickory Street also improve vehicular passage between the core of the village and outlying parcels.

The classified road network within the Town of Pewaukee and the Village of Pewaukee includes 5.26 miles of Interstate Highway 94; 16.76 miles of state trunk highways (S.T.H. 16, 18, 164, and 190); 26.43 miles of county highways (C.T.H. "FT," "G," "GR," "J," "JJ," "JK," "KF," "M," "SS," "T," and "TJ"). In addition, there are 83.85 miles of local streets for a total of 132.2 miles of streets and highways. Local streets amount to only 63.4 percent of total street mileage in the combined town and village although they represent 90 percent of village streets and highways. (The village has 25 percent of all local streets in the combined areas of village and town.) This points out the high dependency within the town on state and county highways manifested by the large number of homes and businesses located along the county highway system. Frequent and direct vehicular access to county and state highway arterials impairs the capacity and efficiency of these roads. The town relies heavily upon the grid of federal, state and

county highways for transportation purposes. Virtually none of the Town's "local" roads connect any subdivisions directly with the village.

The Soo Line Railroad has two routes through the area. A dual track main line runs east/west along the north shore of Pewaukee Lake, through the Village of Pewaukee and parallel to and just south of Green Road. The second route extends just south of North Avenue (C.T.H. "M"). The Wisconsin Central Railroad runs north/south through the Town of Pewaukee roughly parallel to S.T.H. 164.

Crites Field, the Waukesha County Airport, is located in Section 27, Town of Pewaukee, south of I-94. This is a general aviation field capable of handling multi-engine aircraft on 4,000 feet north/south and east/west runways. Capital Drive Airport is located in the City of Brookfield adjacent to the Town of Pewaukee.

The SEWRPC Transportation Improvement Plan identified only one subsidized transit service for Pewaukee and other unincorporated areas of Waukesha County. Ride Line operates Monday through Friday, from 8 a.m. to 4:30 p.m. on a 48-hour advanced reservation method. The eligible users for Ride Line service are those Waukesha County elderly 60 years of age or older, and handicapped adults, 18 years of age or older.

Previous Political Boundaries

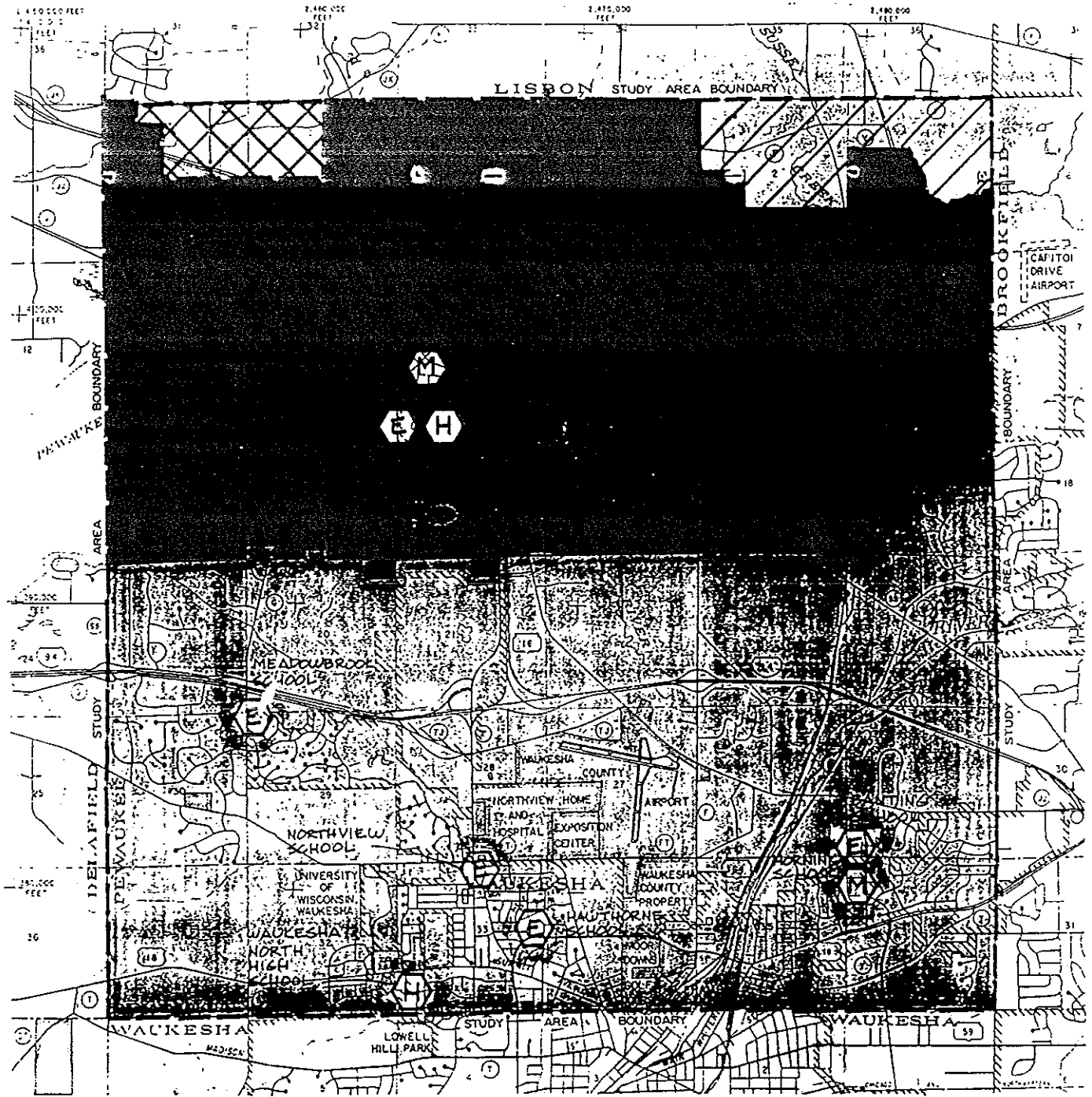
Annexation law (s.66.021 Wis. Stats.) permits cities and villages to annex town lands upon petition by owners and residents. Commercial, industrial and residential developments often locate along or near the transportation routes connecting urban areas. As development concentrates, there is an increasing need for municipal services obtainable only by annexation. As a result, the boundaries of cities often reflect the radiating transportation routes. Such is the case in Waukesha where the city has annexed lands northward across I-94 and easterly along U.S.H. 18 in the Township of Pewaukee.

This easterly expansion along U.S.H. 18 has separated of the main part of the Town of Pewaukee from a portion of town lands in Section 36, south of U.S.H. 18, that now have no direct connection to the rest of the town. Although recent annexations by the City of Waukesha have significantly reduced the area of isolated town lands, a residential development with over 200 residents in SE quarter of Section 36 remains within the town. Dissection of the town detracts from compactness, one of the requirements of this standard.







Boundaries of School District

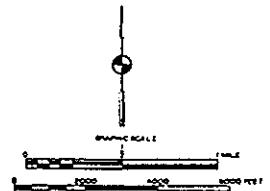
The Town of Pewaukee is served by three school districts, see Figure 6. Consolidation of the village and town will not change school district boundaries. The concept of a single school district serving the municipality is of diminished significance in evaluating an area's homogeneity. School district boundaries are more difficult to change compared to municipal boundaries, and are frequently unaffected by municipal annexations. Even the City of Madison has annexed lands where children continue to attend schools in other neighboring communities.

EXISTING SCHOOL DISTRICT BOUNDARIES AND SCHOOL LOCATIONS IN THE JOINT PEWAUKEE STUDY AREA; 1900



LEGEND

-  PEWAUKEE SCHOOL DISTRICT (GRADES K-12)
-  NORTHERN PART OF WAUKESHA SCHOOL DISTRICT (GRADES K-12)
-  ELEMENTARY SCHOOL DISTRICT BOUNDARY (GRADES K-8)
-  SOUTHERN PART OF ARROWHEAD UNION HIGH SCHOOL DISTRICT (GRADES 9-12)
-  SOUTHERN PART OF HAMILTON SCHOOL DISTRICT (GRADES K-12)
-  SCHOOL
 - E • ELEMENTARY SCHOOL
 - M • MIDDLE SCHOOL
 - H • HIGH SCHOOL



Shopping and Social Customs

As is likely true of any rapidly urbanizing fringe of large metropolitan areas, the shopping and social customs of the residents are as diversified as their age and their tenure in the area.

The Village of Pewaukee is the historic center for shopping and social activities, including recreation facilities, (such as the beach, several parks and school grounds). However, the village faces strong competition from expanding commercial activities locating near the interchanges of I-94. Fast food restaurants proliferate in these areas, along with mini-malls and large discount grocery stores and furniture stores. The economic pressures to locate all nature of business activities in close proximity to freeway interchanges and local zoning, which permits and encourages such location, frequently works counter to efforts to restore or maintain the viability of traditional shopping areas of cities and villages. The mobility of people vastly expands the potential market area of businesses, making a centralized location less desirable for them compared to an outlying location with access to a nearby freeway. It is anticipated that this trend will continue with new commercial centers being added as the population grows. Nevertheless, the unique lake-front location of businesses in the Village of Pewaukee will always provide community identity for residents of the village and its environs, but an identity which is less significant for people living in close proximity to Waukesha, Springdale Road or the Blue Mounds Road business developments.

Social customs are as diverse as shopping customs. Schools, churches, parks and recreational programs all contribute to social focus. Many such facilities draw participants across jurisdictional boundaries, especially in metropolitan areas. The social identity associated with the Village of Pewaukee is well established, that of the town much less so.

Population Density

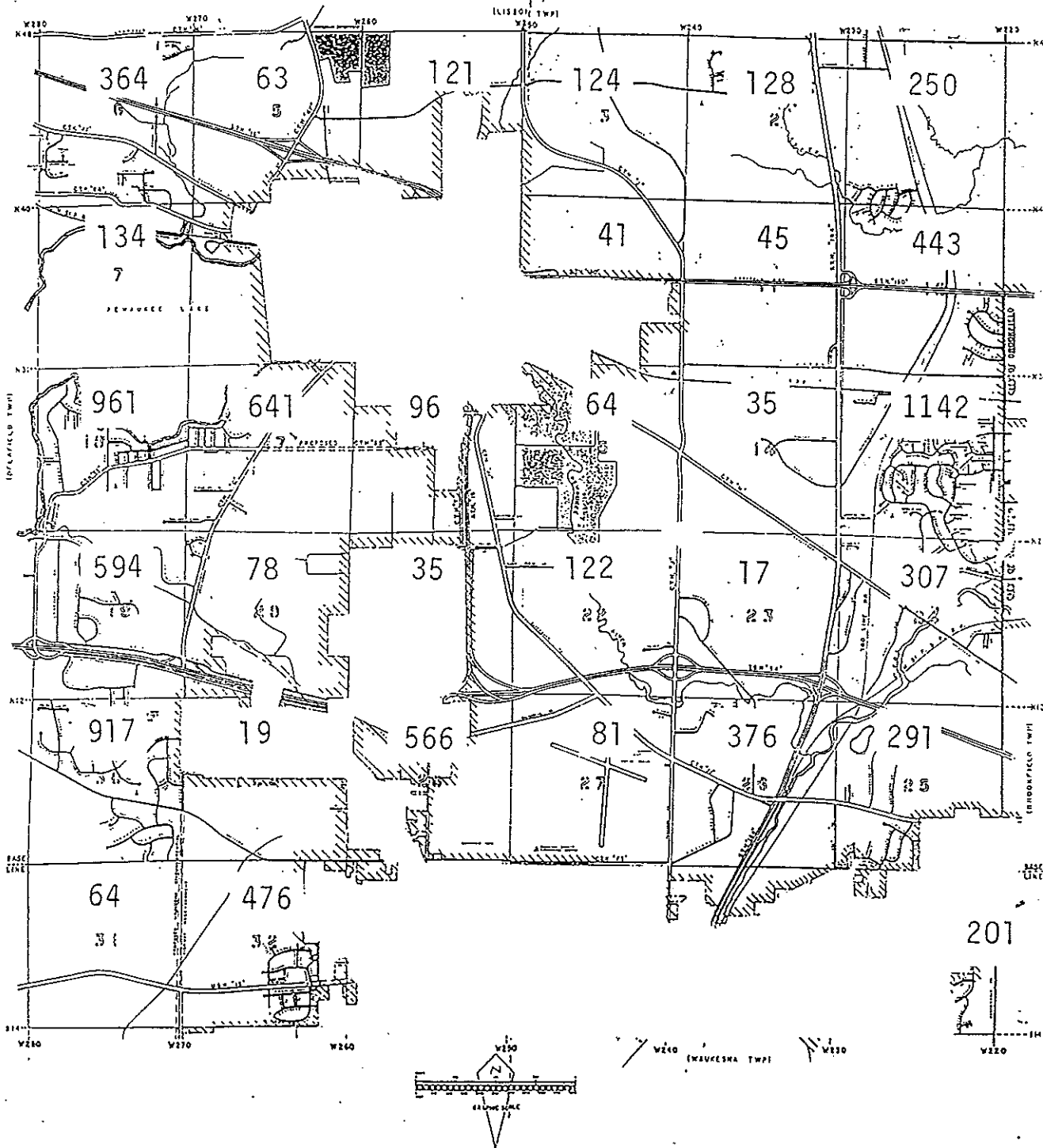
Population density is another characteristic of homogeneity. With an estimated 1987 population of 4,998 in approximately three square miles, homogeneity within the present Village of Pewaukee is readily apparent. Town of Pewaukee population of 9,264 on approximately 27 square miles is a different matter.

Concentrations of residents are found along the south shore of Pewaukee Lake, along the border of the City of Waukesha, especially in Section 30, and as a westward extension of residential development from the City of Brookfield and the Town of Brookfield, especially in Section 13. Figure 7 shows population distribution for 1985 prepared from information compiled by SEWRPC. At that time nearly 18 percent of the Town of Pewaukee population resided in the area bounded by Springdale Road, Capitol Drive, the Wisconsin Central Railroad, and I-94. Residential development in this area is indiscernible from that of the Brookfield communities east of Springdale Road.

Using the 1985 location data, nearly 36 percent of the town's residents living south of I-94 concentrated in several areas along the periphery of the City of Waukesha. Nearly 1,000 persons lived just west of Waukesha and

ESTIMATED 1985 TOWN POPULATION PER SQUARE MILE - COMPILED FROM QUARTER SECTION POPULATION DATA PREPARED BY SEWRPC.

PEWAUKEE TOWN WAUKESHA COUNTY, WISCONSIN



south of I-94 in Sections 19 and 30. These sections contain large lot residential development with town standards for street improvements which are easily differentiated from those of the City of Waukesha. Nearly 500 persons resided in a residential area along both sides of U.S.H. 18 just west of Waukesha. More than 560 town residents were in Section 28 which includes the county institutions. Over 850 persons resided in subdivisions located in Sections 25, 25 and 36. The 200+ residents of Section 36 are separated from the rest of the Town of Pewaukee because the City of Waukesha extends eastward along Moorland Boulevard (U.S.H. 18). Approximately 2,000 people resided in the area north of I-94 and south of Pewaukee Lake in Sections 17, 18, 19 and 20. Another 500 people lived along the lake's north shore west of the Village of Pewaukee. All of these areas that have had new home construction since 1985 have likely increased in population; each area likely continues to represent a similar proportion of total town population as it did in 1985.

Town population in other areas is considerably less dense as shown on the map, but for a variety of reasons. For example, the northern tier of sections (1 through 6) had only 1,050 residents because development pressures are less. This area has no sewers except for properties in Section 6 on the north shore of Pewaukee Lake. Preferred subdivision development relies on sewers. Lately it has become more difficult to obtain plat approvals, develop and sell lots in unsewered subdivisions. Therefore, this northernmost area remains rural in character, although a 35 lot unsewered subdivision is planned for Section 33, Town of Lisbon, along the north line of Section 4, Town of Pewaukee.

Town population in the area bounded by I-94, S.T.H. 16, Capitol Drive and the Wisconsin Central Railroad was relatively sparse in 1985 and remains so with some exceptions. Pressures for development in this area favor business and industry consistent with the land use plan, and some large land holdings are targeted toward that activity. In this area residential subdivisions are small consisting of few lots, each along dead-end streets along C.T.H. JJ, south of the Village of Pewaukee. Other homes are located along state, county and town highways and roads as single-tier development. The trend for expanded residential development is underway with construction of a new subdivision in Section 11 along Green Road. This is an eastward extension of the Village of Pewaukee in much the same manner as the subdivision in Section 13 is a westward extension of Brookfield's influence. This development, plus the potential for residential development along C.T.H. G, the northside of Capitol Drive and in the southeast quarter of Section 15, will contribute to homogeneity of population distribution.

The spatial distribution of population cannot be the sole criteria by which to determine homogeneity of the proposed consolidated community. Consideration must also include other development, both real and potential, that provides shopping, employment and recreational opportunities. Office parks, industrial and commercial activities, along with a proposed elderly housing complex, are focused on a four-square mile area bounded by I-94, S.T.H. 164, Green Road and the Pewaukee River and its lowland areas. This development provides urban linkages that enhance a concept of homogeneity for the area north of I-94 in Pewaukee Township.

However, considering the entire Town of Pewaukee, which includes a portion of Section 36 (which is disconnected from the rest of the town), and the lack of development in Section 30 and the west half of 31, neither homogeneity nor compactness exist.

DETERMINATION

From the standpoint of characteristics of the territory, the Department finds the following:

The territory consisting of the Town of Pewaukee is not compact in that it includes lands in Section 36 that lack a direct connection to the balance of the town; and as a result of annexation by the City of Waukesha, highly irregular city-town boundaries exist along Pewaukee Road south of Northview Road, along Summit Avenue (S.S.H. 18), and along Grand View Boulevard (C.T.H. "T") between Silvernail and Northview which seriously detract from a concept of compactness.

Natural boundaries, natural drainage basins, soil and topographic conditions, although varied, are not so severe as to prevent a finding of homogeneity. The lake and streams with their associated wetlands and flood prone areas provide an opportunity for open space greenways that enhance the community rather than creating barriers to development.

Boundaries of school districts are unaffected and therefore neutral with respect to consolidation of the village and town.

In the context of land use patterns, those of the town lying north of I-94 and west of S.T.H. "16" have much in common with the village and focus on Pewaukee Lake. That recent and anticipated development east of the village is consistent with the joint general development plan prepared by SEWRPC and adopted by the village and town demonstrates commonality of interest and goals. That there exists a reasonable potential for development, on suitable lands, for the northern most area of the town in proximity to the village. That more distant town areas to the northeast have limited development potential, however, developable lands are not so extensive as to seriously detract from homogeneity for the total area. That the lack of development or development potential in the southwest corner of the town is evidence of a lack of community identity and homogeneity with the proposed consolidated community. That town development south of I-94, in general, lacks homogeneity with the village and those areas of the town north of I-94.

Transportation facilities, previous political boundaries, shopping and social customs focus on the Village of Pewaukee, the City of Waukesha and to a lesser extent, the City of Brookfield. Taking these factors into consideration, a determination supporting homogeneity and compactness cannot be made.

Based on the findings and conclusions relative to homogeneity and compactness, the Department determines that this standard has not been met.

SECTION 1 (b) TERRITORY BEYOND THE CORE SQUARE MILE

STANDARD TO BE APPLIED

"The territory beyond the most densely populated square mile as specified in s. 66.015 (3) shall have the potential for residential or other urban land use development on a substantial scale within the next three years. The department may waive these requirements to the extent that water, terrain or geography prevents such development."

ANALYSIS

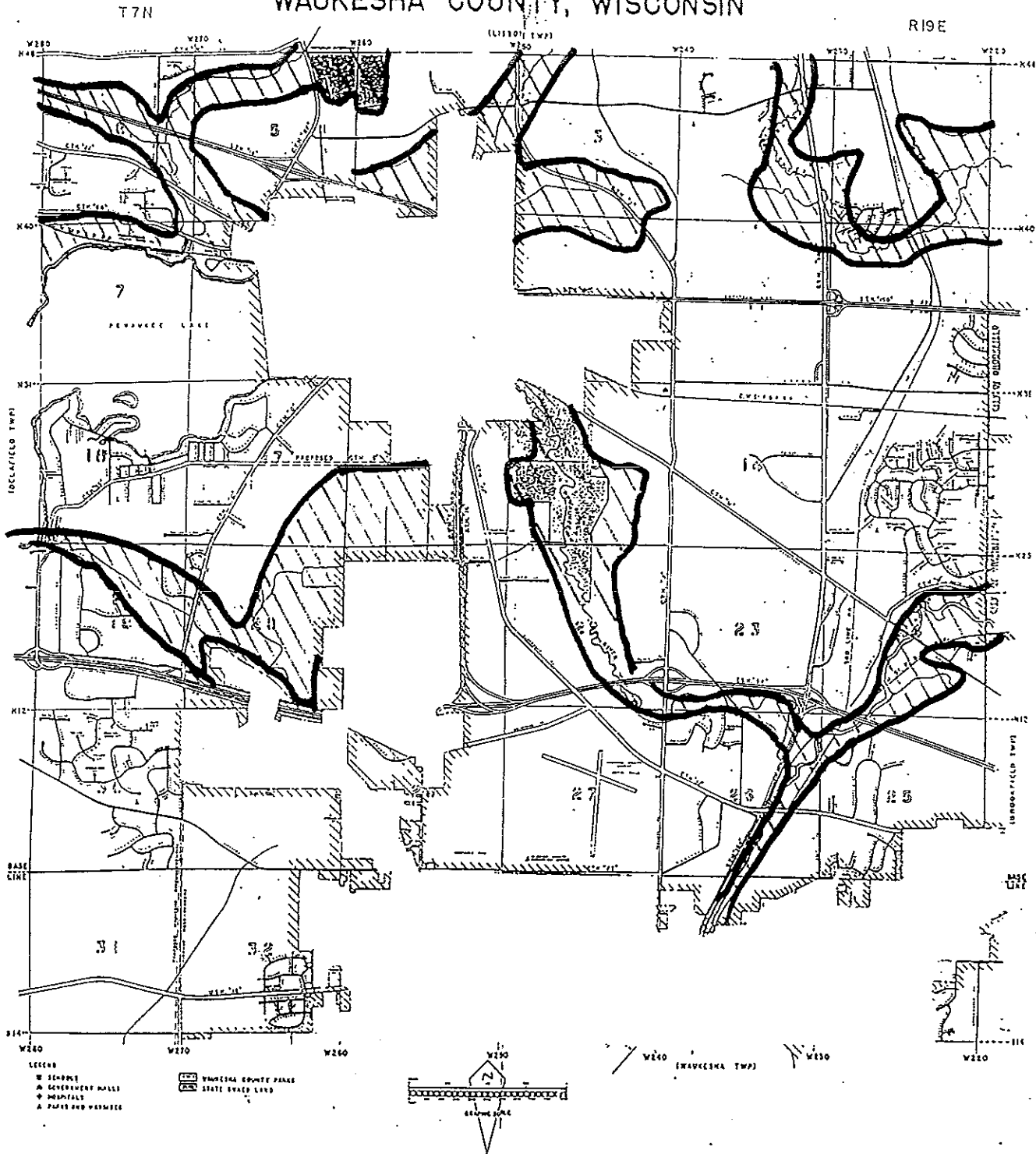
For the purpose of this consolidation, the "core" is the existing Village of Pewaukee. Lands which in the Department's judgment are undevelopable to the "extent that water, terrain or geography prevent...development" are shown on the figure 8. Two categories of land considered undevelopable are included within the identified areas: (1) All lands subject to 100 year flood and, therefore, zoned by the Waukesha County Shoreland and Floodland Protection Ordinance are considered undevelopable even though the county ordinance would not apply following consolidation. The county's floodland zoning is intended to keep development out of flood hazard areas, to preserve natural drainage and floodways and avoid costly public improvements which would likely be required if floodways were constricted due to land "reclamation," (fill) practices. (2) In addition, large area wetlands such as the area south of the Waukesha County Technical Institute are considered undevelopable. Delineation of these areas is also based on SEWRPC Report No. 76, A Land Use Plan for the Village of Pewaukee: 2000 adopted by both village and town as their desired goal. Although consolidation will supplant the county zoning authority, it will be replaced by similar municipal zoning. The natural characteristics of the undevelopable lands can provide greenways within an urban community thereby avoiding monotony resulting from uninterrupted urban development.

Having delineated undevelopable lands in a very general way, the next part of this standard of law is to determine which lands "shall have the potential for residential or other urban land use development on a substantial scale within the next three years." In the analysis of this requirement, the Department has identified areas where it can be stated with relative certainty that urban development is unlikely to occur in the next three years. These general areas are shown on figure 9 by a crosshatched pattern. These areas are found in Sections 1, 2, 3, 4, 6, 31 and 32. With the exception of possible additional homesites and business locations along the existing roads in the northern tier of town, there is no anticipated development on a substantial scale in Sections 1, 2, 3, 4 and 6, largely because of remoteness and lack of utility services. Lack of readily available utility services will likely delay further urbanization of Sections 31 and 32. This southwestern portion of the Town of Pewaukee is within the potential service area of the City of Waukesha.

Extensive acreages of land suitable for development are found in north half of Section 10, Section 11, the west half of Section 12, Sections 14, 15, 17, 18, 22, 23, 25, the south half of Section 29 and Sections 31 and 32. In total there is far more land available for development than will be needed in the foreseeable future considering recent land demands. The difficulty,

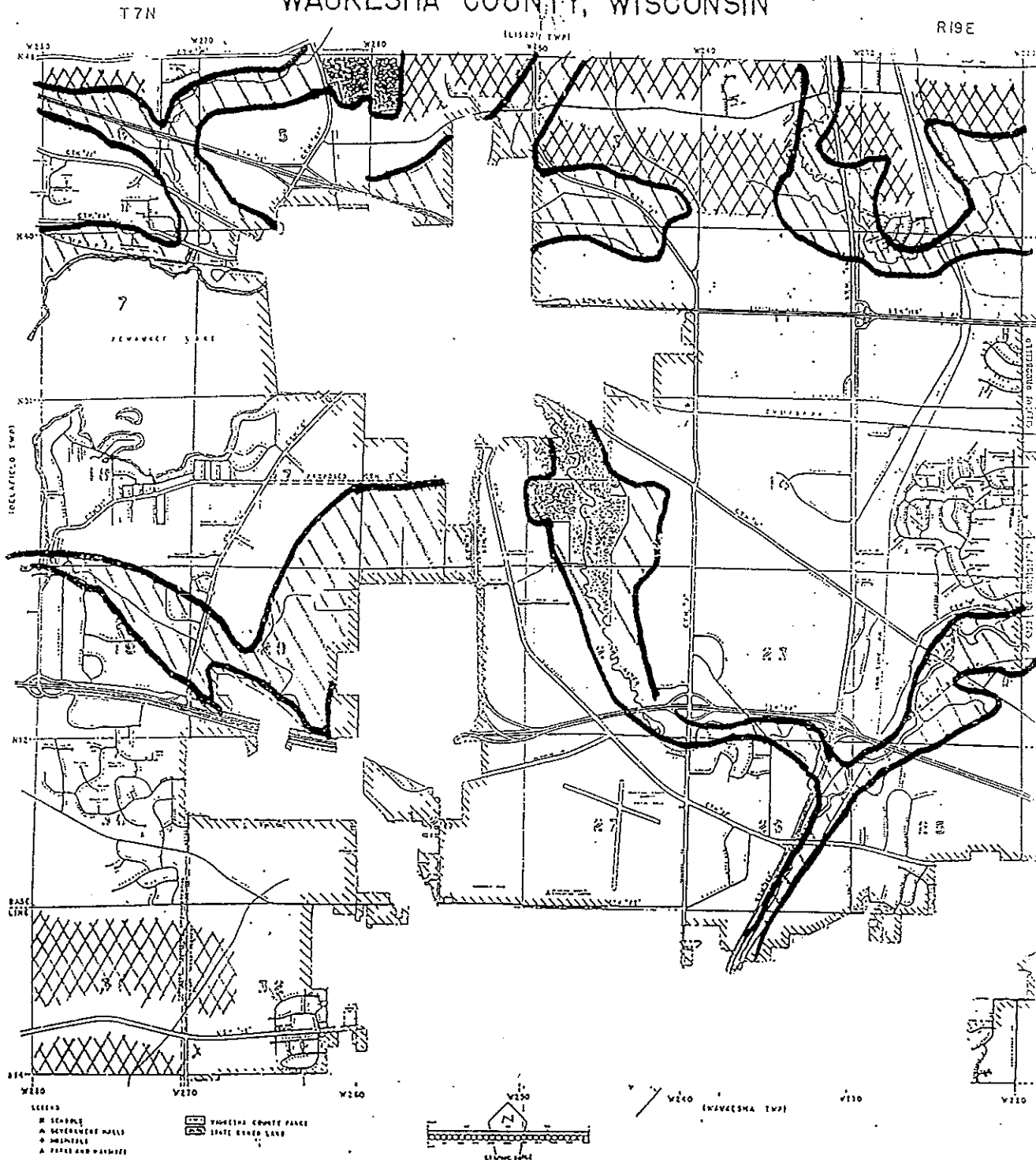
APPROXIMATE DELINEATION OF UNDEVELOPABLE LAND CONSISTING OF FLOODLANDS, WETLANDS AND ENVIRONMENTALLY SENSITIVE AREAS.

PEWAUKEE TOWN WAUKESHA COUNTY, WISCONSIN



APPROXIMATE DELINEATION OF AREAS DETERMINED TO LACK SIGNIFICANT POTENTIAL FOR DEVELOPMENT WITHIN THREE YEARS.

PEWAUKEE TOWN WAUKESHA COUNTY, WISCONSIN



however, lies in identifying with reasonable certainty which lands will develop first. Existing development pressures are concentrated in the areas north of I-94. These are the lands (the developable portions of Sections 10, 11, 14, 15, 17, 18, 22 and 23) that are considered to have potential for development on a substantial degree. This is evident by ongoing residential subdivision construction in Sections 11 and 18, and attempts at annexation to the Village of Pewaukee for residential purposes in Section 17. The potential for other anticipated and announced development proposals may only hinge on continued favorable economic conditions. Examples of anticipated development include an elderly housing complex in Section 15 and an office park in Section 22. Finally, the Department believes there is potential for substantial development along the Capitol Drive corridor as an eastward expansion of the Village of Pewaukee and as a westward extension of urban development from Brookfield (and the greater Milwaukee metropolitan area).

DETERMINATION

Upon review of the information submitted by the petitioners, and after analysis of the potential for urban development within three years in the forms of new residential, commercial and industrial projects within the territory petitioning for consolidation as the Village of Pewaukee, the Department finds that large, outlying areas, especially in Sections 31 and 32, lack such potential and, therefore, determines this standard has not been met.

SECTION 2 (a) TAX REVENUE

STANDARD TO BE APPLIED BY THE DEPARTMENT

This standard requires the proposed consolidation be in the public interest, as determined by the Department after considering whether "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."

ANALYSIS

A preliminary budget was submitted to the Department by the petitioners and is reproduced on table 2. The petitioners anticipate that annual budgets for the first years for the consolidated village will closely approximate a combination of projected village and town budgets. The petitioners probably rightfully assume that assimilation of present village and town functions will occur over time rather than as an immediate result of consolidation. A projection of known budgets (village and town) also leaves little uncertainty regarding the ability to obtain needed revenues. Finally, the proposed budget provides a better basis for comparison of revenues of similar areas for the same level of services.

Table 3 presents equalized full values (take from Wisconsin Department of Revenue "Statements of Merged Equalized Values" and percentage changes for the years 1982-1987 for selected Waukesha County municipalities which surround the petitioners.

Table 2

COMBINED AND CONSOLIDATED TOWN
AND VILLAGE BUDGET - 1988 AND PROPOSED 1989

BUDGET CATEGORY	1988 TOWN	1988 VILLAGE	1988 COMBINED	1989 CONSOLIDATED VILLAGE
REVENUE-				
TAX LEVY	\$1,163,000	\$ 940,393	\$2,103,393	\$1,900,000
INTERGOVERNMT (STATE, OTHER)	1,495,779	933,900	2,429,679	2,800,000
PERMITS, LIC., SERV, CHAR. ETC	1,085,401	304,000	1,389,401	1,390,000
SEWER/WATER CHARGES	-	1,128,399	1,128,399	1,130,000
OTHER	-	543,930	543,930	545,000
*TOTAL REVENUES	\$3,744,180	\$3,850,622	\$7,594,802	\$7,765,000
EXPENDITURES-				
GENERAL GOVERNMENT	\$ 456, .9	\$ 628,786	\$1,085,065	\$1,105,000
PUBLIC SAFETY (POLICE, FIRE)	642,429	758,764	1,401,193	1,455,000
HEALTH & SAN. (WATER, SEWER)	352,401	726,319	1,078,720	1,120,000
PUBLIC WORKS (HGHWY, OTHER)	704,547	588,991	1,293,538	1,340,000
REC/SOC. SERV (PARK, REC, LIB)	89,560	117,437	206,997	215,000
DEBT SERVICE	1,498,964	936,427	2,435,391	2,435,000
OTHER (MISCELLANEOUS)	-	93,898	93,898	95,000
*TOTAL EXPENDITURES	\$3,744,180	\$3,850,622	\$7,594,802	\$7,765,000

Source: Petitioner's Exhibit I-A

Municipal Full Equalized Values

	1982	1983	1984	1985	1986	1987
CITIES						
BROOKFIELD	1489695680	1486701130	1535202150	1608797800	1661917800	1848619500
DELAFIELD	136627700	140156900	144348660	153976700	153904900	164973800
NEW BERLIN	981370340	988396840	1013934160	1443408900	1081880500	1185522500
WAUKESHA	1267238110	1375415340	1381702200	1443408900	1449507200	1561617900
VILLAGES						
HARTLAND	134649220	136098600	136538500	144967600	146915500	161863400
MENDOTA FALLS	834821200	875105740	865002510	905214500	897027800	950738400
MERTON	25656350	25302400	27093750	26786800	26270800	27468900
PEWAUKEE	109500100	107819410	113425620	120384800	124433000	131380100
SUSSEX	91530800	92964700	97048600	107908600	116107600	131079300
TOWNS						
WILKFIELD	163215800	164217850	171982500	185427700	198405000	223116200
DELAFIELD	165839100	162454100	168536800	170000000	178859100	196071400
GENESEE	172952100	169140000	179099700	178281200	170773500	178884400
LISBON	210762020	212232300	216243920	216826800	210732900	221620100
MERTON	227368100	232888700	228948500	241895300	229793500	247302100
PEWAUKEE	309040820	323341300	335486550	353697600	362608900	389720600
WAUKESHA	215353800	208957600	209054100	212451600	209552000	219889000
STUDY AREA TOTAL	6535621240	6701192910	6843648160	7518786300	7218690000	7839867600
PEWAUKEE VILLAGE AND TOWN TOTAL	418540920	431160710	448912170	474082400	467041900	521100700

Source: Wisconsin Department of Revenue

Table 3 Continued

% Change in Municipal Full Equalized Values

	1982-83	1983-84	1984-85	1985-86	1986-87
CITIES					
BROOKFIELD	-0.0020101	0.03262324	0.08212590	0.03301844	0.11234111
DELAFIELD	0.02583077	0.02990719	0.09860235	-0.0004663	0.07192038
NEW BERLIN	0.00715988	0.02583711	0.46035361	-0.2504684	0.09579801
WAUKESHA	0.08536456	0.00457088	0.04943492	0.00422492	0.07734401
VILLAGES					
HARTLAND	0.01076411	0.00323221	0.06516599	0.01343679	0.10174488
MENDONNEE FALLS	0.04825529	0.01130922	0.03440585	-0.0090439	0.05987618
MERTON	-0.0137958	0.07079763	0.05866637	-0.0192632	0.04560576
PEWAUKEE	-0.0153487	0.05199629	0.11654107	0.03362716	0.05583004
SUSSEX	0.01566576	0.04392957	0.16074811	0.07598096	0.12894677
TOWNS					
BROOKFIELD	0.00613941	0.0472826	0.12915678	0.06998576	0.1454928
DELAFIELD	-0.0204113	0.03744257	0.07939104	0.02000325	0.09623385
GENESEE	-0.0220413	0.05888435	0.05404516	-0.0421115	0.04749507
LISBON	0.00697601	0.01890202	0.02164844	-0.0281049	0.05166350
MERTON	0.02428045	-0.0169188	0.03867340	-0.0500290	0.07619275
PEWAUKEE	0.04627375	0.03756170	0.09388315	0.02519468	0.07476843
WAUKESHA	-0.0297008	0.00046181	0.01672109	-0.0136482	0.04932904
STUDY AREA TOTAL	0.02533373	0.02125819	0.12200714	-0.0399128	0.08605129
VILLAGE AND TOWN TOTAL	0.03015186	0.04117133	0.09954916	0.02733596	0.06992991

Table 4 presents six years of local property tax rates for municipalities adjacent to and including the petitioners. These rates (obtained from the Waukesha County Treasurer's Office) are from the Waukesha County annual real estate tax rolls. Some minor variance in actual rates may occur due to the inclusion of tax increment district values. These purely local rates do not reflect special assessments, which for Town of Pewaukee residents, depending upon which sanitary district they reside within, range from \$.10 per \$1,000 to about \$4.31 per \$1,000 of equalized assessed value.

The second part of Table 4 reflects tax rates adjusted for inflation, using 1982 as a base year. Adjusting for inflation illustrates that although municipal tax rates have increased on average, the increase reflected in actual rates is in most cases largely due to inflation. Absolute differences between local rates is due to types and levels of local government services provided, as well as amount of a "tax effort" required to generate a local property tax component (i.e., high per capita value communities tend to have lower tax rates--which is the case for the Town of Pewaukee and the City of Brookfield, for example).

Table 5 brings together previously presented tax rates, population amounts, and local tax levy estimates, enabling the construction of a series of estimated local tax rates for several different alternatives. Because of the town's low existing local tax rate (and a high equalized value per capita), consolidating the town with the village, even after budget changes, increases the existing town tax rate by about 20 percent, while reducing the existing village levy by about 46 percent.

Because of the high per capita equalized value resulting from the proposed merge of the village and the town, state-shared aids are felt to be less than originally estimated by the town and village. In addition, due to recent changes in the state transportation aid formula, all municipalities (incorporated or not) will receive either approximately 24 cents per dollar of eligible transportation costs, or \$750 per mile, whichever is greater, contrary to the previous formula which provided additional aid for local roads in incorporated municipalities at a rate approximately twice what a town would have received. Aid changes are averaged over a six year period with any aid increases limited to 10 percent per year and decreases to 5 percent per year. The net result is that additional local taxes (or other revenue sources) will need to be utilized in order to maintain local expenditures at the levels estimated for the proposed consolidated town and village. Finally, the tax rates previously shown in Table 5 include sewer and water service for the village, but not for the town (town residents in the Lake Pewaukee Sanitary District in 1987 paid an additional \$4.09 per \$1,000 equalized assessed value, town residents in Pewaukee Sanitary District No. 3 paid \$.09 per \$1,000 of equalized assessed value). City of Waukesha residents also pay additional charges for sewer and water.

DETERMINATION

Based on the information provided, it is the Department's finding that as concerns tax revenues, the consolidation of the Town and Village of Pewaukee will likely result in some relatively small change in local property tax assessments, but the anticipated revenues can be raised at a rate that compares favorably with that of similar local governments. Therefore, the Department finds this standard is met.

Table 4

LOCAL PROPERTY TAX RATES
(IN \$ PER \$1000 OF VALUE)
YEAR

	1982	1983	1984	1985	1986	1987
CITIES						
BROOKFIELD	3.954	4.287	5.229	5.763	6.222	5.895
DELAFIELD	4.877	5.626	6.407	6.648	7.407	7.303
NEW BERLIN	3.152	3.678	3.899	4.096	5.137	5.13
WAUKESHA	5.979	6.688	7.598	8.281	8.995	8.926
VILLAGES						
HARTLAND	6.034	5.978	6.325	6.304	6.911	6.911
MENOMONEE FALLS	5.827	5.986	6.23	6.424	6.883	6.851
PEWAUKEE	5.754	6.126	6.285	6.671	7.011	7.162
SUSSEX	1.952	2.99	3.89	4.693	5.269	5.238
TOWNS						
BROOKFIELD	1.107	1.415	2.183	2.328	2.635	3.671
DELAFIELD	0.642	0.722	1.154	1.187	1.345	1.287
GENESEE	0	0.239	0.252	0.421	1.007	0.968
LISBON	0.428	0.702	0.696	0.692	0.949	1.172
MERTON	0.521	1.083	1.203	1.156	1.399	1.358
PEWAUKEE	1.351	1.67	1.769	2.027	2.414	2.328
WAUKESHA	0.271	0.145	0.367	1.207	1.19	1.166

Table 4 Continued

ADJUSTED LOCAL PROPOPERTY
TAX RATES USING A
PRICE DEFLATOR FOR STATE/
LOCAL GOVERNMENTS

FACTOR AMOUNT YEAR	1 1982	0.955 1983	0.91 1984	0.867 1985	0.838 1986	0.802 1987
CITIES						
BROOKFIELD	3.954	4.094085	4.75839	4.996521	5.214036	4.72779
DELAFIELD	4.877	5.37283	5.83037	5.763816	6.207066	5.857606
NEW BERLIN	3.152	3.51249	3.54809	3.551232	4.304806	4.11426
WAUKESHA	5.979	6.38704	6.91418	7.179627	7.53781	7.158652
VILLAGES						
HARTLAND	6.034	5.70899	5.75575	5.465568	5.791418	5.542622
WENONHONEE FALLS	5.827	5.71663	5.6693	5.569608	5.767954	5.494502
PEWAUKEE	5.754	5.85033	5.71935	5.783757	5.875218	5.743924
SUSSEX	1.952	2.85545	3.5399	4.068831	4.415422	4.200876
TOWNS						
BROOKFIELD	1.107	1.351325	1.98653	2.018376	2.20813	2.944142
DELAFIELD	0.642	0.68951	1.05014	1.029129	1.12711	1.032174
GENESEE	0	0.228245	0.22932	0.365007	0.843866	0.776336
LISBON	0.428	0.67041	0.63336	0.599964	0.795262	0.939944
MERTON	0.521	1.034265	1.09473	1.002252	1.172362	1.089116
PEWAUKEE	1.351	1.59485	1.60979	1.757409	2.022932	1.867056
WAUKESHA	0.271	0.138475	0.33397	1.046469	0.99722	0.935132

Table 5.

ESTIMATED 1988 LOCAL
TAX LEVIES AND RATES

	ESTIMATED TAX LEVY	ESTIMATED EQUALIZED VALUE	TAX RATE	TAX IMPACT ON A \$100,000 RESIDENCE
TOWN OF PEWAUKEE	1163000 (a)	380992400 (c)	0.00305	\$305
VILLAGE OF PEWAUKEE	940393 (a)	137090600 (c)	0.00686	\$686
CONSOLIDATED TOWN AND VILLAGE	1900000 (a)	518083000 (c)	0.00367	\$367
CITY OF WAUKESHA	13688792 (b)	1561617900 (b)	0.00877	\$877
	14679500 (c)	1643122045 (c)	0.00833	\$833

NOTES

(a) FROM PETITIONER'S EXHIBIT I-A.

(b) FROM CITY OF WAUKESHA "REPORT...", EXHIBIT 20.

(c) DEPARTMENT ESTIMATE.

SECTION 2 (b) LEVEL OF SERVICES

STANDARD TO BE APPLIED:

"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 and the level available from a contiguous municipality which files a certified copy of a resolution as provided in s. 66.014 (b)."

In evaluating this standard the Department gives credance to the petition by City of Waukesha to annex and serve only that area of the Town of Pewaukee south of I-94 rather than the entire area proposed for incorporation. Therefore, the comparison of services is evaluated accordingly.

ANALYSIS

Police Protection and Facilities

Both the town and the village currently provide for police protection and maintain police stations. Services provided by the town include patrol and traffic enforcement, and recordkeeping. In addition to the above, the village also provides for detectives and lake patrol. These functions are accomplished by one full-time patrolman, one part-time patrolman and one part-time police chief in the town; and by eight partrolmen, two sergeants and one police chief (all full-time) in the village. The Waukesha County Sheriff's Department provides the "major portion" of required police protection services within the town (with the town providing reciprocal aid to the Sheriff's partment). The town has three squad cars and a boat; the village has four squad cars.

The Waukesha Police Department currently employs 119 full-time personnel, (90 officers, 28 civilian personnel, and 1 parking agent), who provide services for patrol, traffic, detectives, juvenile, jail, records, warrants, and identification (one staff person for every 445 citizens). The 1989 Capital Improvement Plan will be including a new facility to meet the expanding needs of the Department. The Police Department operates the city's 9-1-1 emergency dispatch system (which is only the second citywide system in the state). The city has asserted that the Police Department can serve immediate annexations of land from the Town of Pewaukee, and would determine further service needs based on types and densities of development as it occurs.

Fire Protection Service and Facilities

Fire protection and rescue (emergency medical services) are provided by a joint town and village fire department. Sixty (60) part-time firefighters, one part-time chief, and two assistant fire chiefs respond on a paid-on-call basis.

Mutual aid agreements with other fire departments in Waukesha County provide for additional personnel and equipment if needed. The village and the town separately list equipment and land/building assets for use by the fire department:

1. Village of Pewaukee - One fire station in the village's administrative building on Hickory Street, and seven motorized vehicles (including one ambulance and four pumper trucks);
2. Town of Pewaukee - Two fire stations (at the intersection of Northview Road and Meadowbrook, and on Green Road west of the intersection of Duplainville Road, and six motorized vehicles (including two ambulances and two pumpers).

In their Land use Plan for the Town and Village of Pewaukee, SEWRPC noted that an additional fire station would be advisable in the central portion of the township (somewhere along CTHF between CTH SS and IH-94).

The City of Waukesha Fire Department employs 88 full-time fire personnel, who are also licensed Emergency Medical Technicians, as well as "first responders." In addition, the Department has ten paramedics on call. Four fire stations house seven engines, two ladder trucks, three ambulances, one paramedic unit, one special service vehicle and five staff cars which are all staffed 24 hours a day. The current ISO fire insurance rating is a "3."

The city is planning on constructing two additional fire stations. Although the city has indicated that it could utilize the Town of Pewaukee fire station located on Meadowbrook Road, it may not be in the optimum location to adequately serve developing lands in Sections 31 and 32, or developing lands to the south in the Town of Waukesha which may be annexed to the City of Waukesha. The city contends that commercial areas in the town may benefit from reduced fire insurance premiums due to the city's lower fire rating.

Fire Insurance Ratings*

<u>Towns</u>	<u>ISO Rating</u>
Brookfield	7
Delafield	7
Pewaukee	5
Waukesha	9
<u>Village</u>	
Pewaukee	6
<u>Cities</u>	
Brookfield	4
New Berlin	3
Waukesha	3

*As of July, 1988

Source: ISO Commercial Risk Services, Inc.

Parks and Recreation

SEWRPC's A Park and Open Space Plan for the Towns and Village of Pewaukee, Waukesha County, Wisconsin (1980) inventoried existing park and recreation sites, and projected future needs based on standard recreation needs per capita and projected population growth.

SEWRPC estimated that the village had sufficient existing park land and school playgrounds to meet estimated year 2000 population needs. The town was estimated to be meeting their current recreational needs, but was projected to have a shortage of available parkland by the year 2000. The town has subsequently added additional type IV parks (those less than 25 acres in size).

Within the parks themselves, both the town and village in 1975 exceeded intensive recreation facility goals (baseball diamonds, basketball goals, playfields, playgrounds, softball diamonds and tennis courts).

City of Waukesha parks total 672 acres. The city operates a year-round recreation program for all ages, assessing program fees (and fees at a higher rate for non-residents) to partially offset program expenditures. The city has largely followed the recommendations for park locations contained in A Land use Plan for the Town and Village of Pewaukee: 2000, in the city's own Park and Open Space Plan recommendations. As additional development occurs in the city (which would affect annexed lands), Section 23.08 of the city "Subdivision Platting Code" provides for appropriate dedications of land or money-in-lieu of dedication.

Public Works

Currently, both town and village perform various public works functions, including the maintenance of streets and highways, public buildings, sewer and water systems, parks and cemeteries, and equipment. Combined health and sanitation and public works employees for both jurisdiction, total 24 full-time equivalent employees.

Within the town, public works staff are separated into streets and highways, park and recreation, sewer and water utilities, and maintenance. In the village, public works functions are combined under a public works superintendent.

The City of Waukesha streets and solid waste disposal operations appear adequate to serve Town of Pewaukee lands south of I-94.

Utility Services

Sanitary sewers, water systems and storm drainage are a part of the public works function of cities and villages. Generally this is a city-wide service. However, in those instances of large-area incorporations with vast rural lands not needing services, utility district administered by the city or village are formed to serve developed areas. In unincorporated territory the service may be provided by a town sanitary district. State law provides for transfer of administrative responsibility of the sanitary district to the city or village in the event the district falls entirely within an

incorporated municipality. If a town sanitary district is divided as the result of incorporation, administrative responsibility goes to the jurisdiction having the greatest number of patrons. As a result of consolidation, the Lake Pewaukee sanitary district may find that the greatest number of patrons reside in Pewaukee (and less than half on the Delafield side).

The Southeastern Wisconsin Regional Planning Commission is the designated water quality planning agency responsible for delineating sewer service areas. SEWRPC established a City of Waukesha service area boundary, with a few exceptions, along I-94. It is only reasonable, therefore, for the Department to find that sewer services south of I-94 are best provided by the City of Waukesha. For the remaining town lands lying north of I-94, consolidation of the village with the town will likely result in improved coordination for the delivery of both water and sewer services to newly developing areas.

Storm water drainage systems in the village and city normally include streets with curb and gutter, catch basins and underground sewers. In the town, side ditches and surface drainage ways are most common. The Department does not judge which system is superior, suffice it to say that a means to avoid surface water ponding is available and is being utilized by each municipality as a part of their land development regulations.

DETERMINATION

The Department finds that services from the City of Waukesha for that portion of the Town of Pewaukee south of I-94 are superior to those available from the proposed consolidated village both in terms of the array of services and efficiency of operations. Therefore, this standard is not met based on the petition which included the entire Town of Pewaukee.

SECTION 2 (c) IMPACT ON THE REMAINDER OF THE TOWN

STANDARD TO BE APPLIED:

The impact, financial and otherwise, upon the remainder of the town from which the territory is to be incorporated.

ANALYSIS

Since the petition was for consolidation of the entire town with the Village of Pewaukee there would be no remainder of the town and therefore no impact.

SECTION 2 (d) IMPACT UPON THE METROPOLITAN COMMUNITY

STANDARD TO BE APPLIED:

The effect upon the future rendering of governmental services both inside the territory proposed for incorporation and elsewhere within the metropolitan community.

ANALYSIS

The "metropolitan community" definition in s. 66.013 (2) (c) would, in this instance, include lands of the greater Milwaukee metropolitan area, most of which are so far removed that the consequences of this proposed consolidation would be non-existent. Therefore, in the analysis of metropolitan impact, the Department examines only the potential effect on municipalities contiguous to the area proposed for consolidation. Contiguous cities in addition to Waukesha (which filed a motion to intervene), are Brookfield, Menomonee Falls and New Berlin (the latter two are contiguous only at a point at the northeast and southeast corners, respectively). Contiguous towns are Brookfield, Delafield, Waukesha, Lisbon, Merton and Genesee. The latter three do not meet the standard of 100 persons per square mile for the areas where these towns are contiguous to the proposed consolidation, therefore, the potential impact of the consolidation will be considered for the Cities of Waukesha and Brookfield and the Towns of Brookfield, Delafield (that area in the vicinity of Pewaukee Lake) and Waukesha.

Since cities and villages may only annex unincorporated lands, the most significant impact would be the freezing of existing City of Waukesha boundaries in Pewaukee township, stopping any City growth to the north. (Contiguous, unincorporated lands in the Towns of Brookfield and Waukesha could petition for annexation to Waukesha.) Because annexation may only be accomplished with the consent of a majority of electors (by petition or special referendum), and the owners of the majority of real property either in assessed value or acreage, annexations have been accomplished in a piecemeal manner. Resulting city boundaries are therefore irregular, gerrymandering around properties whose owners/electors do not want to be annexed. Examples of irregular boundaries that would be frozen are those found along Pewaukee Road south of C.T.H. "FT," Northview Road, Grandview Boulevard and U.S.H. 18 west. In addition to these locations there are other areas where annexation was requested and accomplished on an "as needed" basis in order to obtain city services. These are transition areas, one example of which is the south half of Section 29 which is bordered on the north and east by residential subdivisions with stub streets obviously intended to continue into that area. Freezing the border in its present location would likely result in different development standards for this area. For these and perhaps a variety of other reasons the City of Waukesha filed a motion to intervene and an expression of willingness to annex Town of Pewaukee territory south of I-94.

Although the City of Brookfield borders the proposed consolidation along stretches of Springdale Road, the City did not file a motion to intervene. Nevertheless, if successful, the proposed consolidation would foreclose any future option of westward growth of Brookfield and would enable Town of Brookfield territories the option of requesting annexation to either Brookfield or Pewaukee. (Therefore, Springdale Road should not be assumed to be the permanent boundary unless all Town of Brookfield areas either remain in the town or eventually petition for annexation to Brookfield.) The City of Brookfield expressed concern about potential negative impacts on Capitol Drive Airport from future development in the Town of Pewaukee. The airport has other statutory means to protect its interest, short of annexation, which have not been utilized.

Although the consolidated Village of Pewaukee would be eligible to annex Town of Lisbon lands contiguous to its northern boundary, the nature of development and the remote probability for utility services in the near future makes such an event unlikely.

The potential for annexation in the westerly direction is a real possibility. For example, Section 18, Town of Pewaukee does not encompass the entire lake shore. The dividing line between Section 13, Town of Delafield and Section 18, Town of Pewaukee passes through properties along the "south" shore of Pewaukee Lake dividing some properties into two local government jurisdictions. If consolidation occurs, that portion of Section 13, Town of Delafield, that is contiguous by land to Section 18 Town of Pewaukee should be annexed. Upon petition by owners and electors, the consolidated village could also consider annexation of lands within Pewaukee Lake Sanitary District and along I-94.

The potential impact on the Lake Pewaukee Sanitary District is nominal; State law provides for a transfer of administrative responsibility, if through annexation, incorporation, or consolidation, a majority of patrons reside in the village. Upon consolidation, if a change in sanitary district status is necessary because of the location of the majority of patrons, such change would be consistent with legislative intent. Preservation of the portion of the Lake Pewaukee Sanitary District lying within the territory of the proposed village should not be a determining factor regarding this proposed consolidation.

Other changes that could affect neighboring jurisdictions, should the petition for consolidation prevail, include changes in extraterritorial jurisdiction of the incorporated municipalities. For example, subdivision plat approval for villages and 4th class cities extends 1.5 miles beyond their boundary, or if closer, equidistant between neighboring cities and villages. For larger cities (i.e., Waukesha), the maximum distance is three miles into unincorporated territory. Following consolidation Waukesha's extraterritorial plat approval would cease in the territory covered by the consolidation and would be modified in other areas such as in the towns of Brookfield, Delafield, and Waukesha where the equidistant rule would apply. The "new" Village of Pewaukee would have plat approval authority extending into neighboring areas of the Towns of Delafield and Lisbon.

The significance of changes in plat approval authority is nominal in this instance due to similar community goals and standards regulating development from one jurisdiction to the next, most probably as a result of the long history of planning effort by SEWRPC and the Waukesha County Park and Planning Commission.

Consolidation of the town and village would result in a single government responsible for administration and delivery of services. If consolidation occurs, the two town sanitary districts and village water utility will be within the jurisdiction of one governmental unit which can resolve service delivery conflicts by creating an integrated utility system rather than side-by-side independent systems.

On the other hand, similar benefits would not be realized if the consolidated village includes the present town lands south of I-94 which border the

City of Waukesha. Service delivery problems, inefficient duplication of services and possible confusion over which entity has jurisdiction, especially as regards emergency services, may continue.

Expanded housing opportunities will likely result following consolidation. At present, the Village of Pewaukee and the City of Waukesha have adopted "Fair Housing" ordinances permitting development of low- and moderate-income single and multi-family housing within these communities. The Town of Pewaukee zoning ordinance contains multi-family standards but no such development actually exists. Following consolidation, proponents and developers of assisted housing will no longer need to focus on a limited number of sites within the existing village and city, but possibly on scattered locations throughout the area.

DETERMINATION

As regards the metropolitan community, consolidation of the village and town would have an adverse effect on the City of Waukesha by foreclosing options for future annexation by the city and thereby not enabling the city to realize anticipated levels of efficiency of operation of certain city services along an irregular boundary. A correlation to the above can be made regarding service delivery problems, inefficiency and duplication for the consolidated village as well.

Finally, the petitioners did not provide a means for resolving issues affecting the metropolitan community, therefore the Department is unable to make... "an express finding that the proposed consolidation will not substantially hinder the solution of governmental problems affecting the metropolitan community" and this standard is not met.

SUMMARY OF THE ANALYSIS OF THE STANDARDS

- Standard 1(a), Homogeneity and compactness - NOT MET
- Standard 1(b), Potential for urban development - NOT MET
- Standard 2(a), Tax Revenue - MET
- Standard 2(b), Level of Services - NOT MET
- Standard 2(c), Impact on remainder of town - NOT APPLICABLE
- Standard 2(d), Impact on metropolitan community - NOT MET

SUBMISSION OF REVISED PETITION

Three courses of action are provided for the Department pursuant to s. 66.014 (9) (e):

- "1. The petition as submitted shall be dismissed.
2. The petition as submitted shall be granted and an incorporation (consolidation) referendum held, (in each jurisdiction).
3. The petition as submitted shall be dismissed with a recommendation that a new petition be submitted to include more or less territory as specified in the Department's findings and determination."

The Department has determined that the requirements of s. 66.016 (1) (a) and (b) and the requirements of s. 66.016 (2) (b) and (d) are not met eliminating the possibility of referendums in the town and village on the consolidation issue.

The remaining alternatives are for dismissal, or dismissal with a recommendation for consolidation of more or less territory.

In the analysis of conditions pertinent to this consolidation, the Department finds sufficient merit in the "motion to intervene" filed by the City of Waukesha to recommend that consolidation of the Town of Pewaukee with the Village of Pewaukee only include the town territory north of I-94, but including those stretches of I-94 that are presently located in the Town of Pewaukee. (Note: This condition is consistent with the "Resolution of Willingness" to annex the lands in the Town of Pewaukee which lie south of Interstate 94.)

It is a finding of the Department that a consolidation of that area of the town from I-94 north would more likely meet all applicable standards of s. 66.016 without the deficiencies of the original petition.

A means for accomplishing a consolidation of the village and that portion of the town north of I-94 is provided by Wisconsin Statutes although it is untested. Legislation enabling municipal consolidation implies joining together of whole units of local government. The entire Town of Pewaukee, as it existed at the time of the petition, has to be consolidated with the village. Anything less than the entire town is annexation and other sections of the statutes apply. It is not within the authority or responsibility of the Department to split unincorporated town territory in order to facilitate consolidation of two local governments.

However, in this instance, the Court accepted a Motion to Intervene filed by the City of Waukesha citing s. 66.027 Wis. Stats. which may enable the Court to fix the boundary between the Town of Pewaukee and the City of Waukesha along the south side of I-94, (except for that territory north of I-94 already in the city).

The Department notes that s. 66.02 Wis. Stats. makes reference to the referendum procedure in s. 60.03 and 66.018 (5), and, as regards the Department's role in consolidation of a town and village or city, the provisions of

s. 66.014 to 66.019. We believe the limitation of that citation (s. 66.014-66.019) to only the Department was intentional, otherwise, the City of Waukesha would have been unable to express an interest in only partial town annexation. Section 66.014 (6) Wis. Stats., if applicable to the city, would have required a resolution for annexation of "the territory designated in the (consolidation) petition." Since the petition included incorporated and unincorporated lands, (village and town) such annexation could not occur since cities and villages may only annex unincorporated territory. Therefore, the City of Waukesha's only recourse lies under s. 66.027. Herein lies an area of untested legislation.

The following is provided in an attempt to help the Court in arriving at a decision regarding the City of Waukesha's motion.

Every proposed annexation in populous counties (those over 50,000 population) must be submitted to the Department of Development for review and advisory opinion as to whether the annexation would be against the public interest as defined in s. 66.021 (11) (c). Briefly, the review is limited to provision of governmental services, shape of the territory to be annexed and homogeneity.

There are three separate areas of the Town of Pewaukee covered by the City of Waukesha's motion. The first is that territory of the town south of I-94 and west of the City of Waukesha, (parts of Sections 19, 20, 28, 29, 32 and 33 and all of Sections 30 and 31). This area could best be served by the full range of municipal services offered by the City of Waukesha. The shape of the territory, if annexed, would result in a city boundary that is s. ight and square and therefore compact, an improvement over present irregular boundaries. Development within the territory is homogeneous with the city, while large vacant areas would adhere to city development standards at the time they are needed, thereby avoiding unanticipated infrastructure costs if annexation followed development. Therefore, the Department advises that annexation of the area west of the city would not be against the public interest.

The second area that is Town of Pewaukee territory lies south of I-94 and north of the City of Waukesha, (portions of Sections 22, 23, 24, 25, 28, 35 and 36 and all of Sections 26 and 27). This area has had several small area annexations in recent years, each has been found to be not against the public interest. Portions of the area, especially along C.T.H. "T," are considered to be in transition from unincorporated to incorporated status, but this is piecemeal annexation and results from a need for services not otherwise available from the town. Therefore, it is clear that needed municipal services could best be provided by the City of Waukesha. The city may need to closely examine its zoning code to ensure the annexation would not unduly interfere with operation of the airport or heavy industry such as the quarrying found along S.T.H. "164."

The shape of this area would result in an easily discernable city boundary along I-94 and Springdale Road, a vast improvement over the present boundary configuration. Finally, this area is homogeneous with the city, considering that development of similar nature, with the possible exception of the airport and quarry, can be found both within the city and town.

The Department would advise that annexation of this second area would not be against the public interest.

The third area of Town of Pewaukee subject to the city's resolution is found in the southeast corner of Section 36. Several recent annexations have reduced the size of town territory. Each proposed annexation was reviewed and found not against the public interest. If this remaining area were submitted for review a similar finding would result. With the possible exception of sewer service, which may be more economically routed eastward to the Town of Brookfield, all other municipal services can best be provided by the city. The resultant boundary would be smooth and compact and development again is homogeneous with that found within the City of Waukesha.

In summary, it is the opinion of the Department that the annexation of Town of Pewaukee lands south of I-94 would not be against the public interest.

If the Court finds that s. 66.027 is applicable and a new boundary consistent with that proposed by the City of Waukesha is achieved either through written stipulation entered into by the parties of interest or by final judgment of the Court, the remaining area of the Town of Pewaukee may seek consolidation with the Village of Pewaukee.

THE DETERMINATION OF THE DEPARTMENT as prescribed by s. 66.014 (9) (e) 3. is:

THE PETITION AS SUBMITTED SHALL BE DISMISSED WITH THE RECOMMENDATION THAT A NEW PETITION BE SUBMITTED TO INCLUDE THE VILLAGE OF PEWAUKEE AND THE TOWN OF PEWAUKEE AS WILL EXIST FOLLOWING ANNEXATION OF TOWN OF PEWAUKEE LANDS SOUTH OF I-94 TO THE CITY OF WAUKESHA.

A recommendation by the Department to revise the petition for consolidation to include less territory deserves assurance that if submitted the Department will find that the standards of s. 66.016 will be met, therefore, the following brief analysis is offered:

SECTION 1 (a) CHARACTERISTICS OF THE TERRITORY

STANDARD TO BE APPLIED BY THE DEPARTMENT

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.

ANALYSIS

The significant deficiencies uncovered during the analysis of characteristics of the territory of the original petition for consolidation would generally be alleviated in a revised petition. The recommended territory would be compact having readily identifiable boundaries. Reasonable homogeneity would exist because areas having strong identity with the Village of Pewaukee would become a part of the village. School boundaries and associated social patterns would remain unchanged, however, a smaller amount of

the Waukesha School District would be within the village and the net effect is nominal (and could be changed as provided for by Chapter 117, Wis. Stats.). Employment expansion will contribute to community identity in both new and existing residential areas. For these and other reasons the standard for homogeneity and compactness would be met.

SECTION 1 (b) TERRITORY BEYOND THE CORE SQUARE MILE

STANDARD TO BE APPLIED BY THE DEPARTMENT

The territory beyond the most densely populated square mile as specified in s. 66.015 (3) or (4) shall have the potential for residential or other urban land use development on a substantial scale within the next three years. The department may waive these requirements to the extent that water, terrain or geography prevents such development.

ANALYSIS

The smaller area of Town of Pewaukee lying north of I-94 has approximately two-thirds of the total town population but includes the most dynamic area of the town in terms of urban growth for both residential and non-residential activities. In fact, nearly all of the anticipated developments identified by the town in support of the original petition for consolidation are located north of I-94. Those areas along the northern boundary of the Town of Pewaukee that have limited potential for development within the next three years (the three years would begin upon filing a revised petition with the Court) are not so extensive as to result in a finding that this standard is not met.

SECTION 2 (a) TAX REVENUE

STANDARD TO BE APPLIED BY THE DEPARTMENT

Section 66.016 (2) (a) requires that the proposed incorporation must be in the public interest as determined by the Department after considering whether "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.

ANALYSIS

Although the recommended revised territory of the town has only two-thirds of the total town population and approximately 76 percent of the former total assessed valuation, the net change for the combined village and town would be an approximate tax rate of \$4.84 per \$1,000 of equalized assessed value, assuming no corresponding change in the \$1,900,000 local tax levy proposed by the petitioners. This levy compares favorably with that of other surrounding units of government.

It is the opinion of the Department that a consolidated Village of Pewaukee, north of I-94 would have sufficient tax and other source resources when compared to similar municipalities.

SECTION 2 (b) LEVEL OF SERVICES

STANDARD TO BE APPLIED BY THE DEPARTMENT

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. 66.014 (b).

ANALYSIS

It is anticipated that a consolidated Village of Pewaukee, consisting only of territory north of I-94, would be better able to focus its services and resources to more efficiently meet the needs of the rapidly developing area north of I-94. There would be no inefficient duplication of services along an irregular boundary shared with the City of Waukesha.

The Department can not anticipate whether or not the City of Waukesha or City of Brookfield, as contiguous incorporated municipalities may file a resolution of "willingness to annex" thereby requiring further analysis by the Department to compare level of services from each jurisdiction.

SECTION 2 (c) IMPACT ON THE REMAINDER OF THE TOWN

STANDARD TO BE APPLIED BY THE DEPARTMENT

The impact, financial and otherwise, upon the remainder of the town from which the territory is to be incorporated.

If the Court fixes the boundary between the City of Waukesha and Town of Pewaukee as specified in the motion of intervene and the area north of I-94 becomes a part of the consolidated village there will be no remainder of the town.

SECTION 2 (d) IMPACT UPON THE METROPOLITAN COMMUNITY

STANDARD TO BE APPLIED BY THE DEPARTMENT

The effect upon the future rendering of governmental services both inside the territory proposed for incorporation and elsewhere within the metropolitan community.

ANALYSIS

The analysis of the original petition for consolidation identified present and potential problems relative to efficient delivery of services within the metropolitan community and particularly for the City of Waukesha. The recommendation for a revised territory is based on the conclusion that future problems, if any, would not be significant.

DISCUSSION OF REMAINING ALTERNATIVES

If the Town of Pewaukee and Village of Pewaukee are unable to consolidate, inefficiencies and duplication of services will continue. Piecemeal annexation of small areas may serve to satisfy the need for municipal services but this is the kind of annexation that frequently results in irregular boundaries and disagreements over who will provide utility and other services. Transition to incorporated status is slow and may never achieve the goals anticipated by consolidation.

A second alternative is for the village and city to petition for a court ordered referendum on annexation for a territory specified in the petition. A favorable referendum may achieve the same goals as consolidation.

A final alternative, should all attempts at consolidation or large area annexation fail, would be for the three municipalities, town, village and city to identify territories needing specific services and enter into s. 66.30 agreements whereby services are provided across jurisdictional lines. Carefully planned service agreements could help avoid unnecessary duplication of services but may be difficult to maintain intact over a lengthy period of time.

Don Pokorski

Don Pokorski, Supervisor
Div. of Economic Development
DEPARTMENT OF DEVELOPMENT

September 1, 1988

Date

NOTICE OF APPEAL INFORMATION

NOTICE OF RIGHTS FOR REHEARING OR JUDICIAL REVIEW,
THE TIMES ALLOWED FOR EACH AND THE IDENTIFICATION
OF THE PARTY TO BE NAMED AS RESPONDENT

As required by s. 227.48 (2), Wis. Stats., created by Chapter 378, Laws of 1981 (effective May 7, 1982), the following notice is served on you as part of the Department's decision:

Any party has a right to petition for a rehearing of this decision within 20 days of the service of this decision, as provided in s. 227.49 of the Wisconsin Statutes. The 20-day period commences the day after personal service or mailing of this decision. (Decisions of the Department are mailed the day they are dated. In the case of an oral decision, personal service is the oral pronouncement of the decision at the hearing.) The requirements and procedures of s. 227.49 should be followed in petitions for rehearings. The petition for rehearing should be filed with the Department of Development. Nevertheless, an appeal can be taken directly to circuit court through a petition for judicial review. It is not necessary to petition for a rehearing.

Any party has a right to petition for a judicial review of this decision as provided in s. 227.53 of the Wisconsin Statutes. The requirements and procedures of s. 227.53 should be followed in petitions of judicial review. The petition should be filed in circuit court and served upon the Department of Development within 30 days of service of this decision if there has been no petition for rehearing, or within 30 days of service of the order finally disposing of the petition for rehearing. The 30-day period commences the day after personal service or mailing of the decision or order, or the day after the final disposition by operation of law of any petition for rehearing. (Decisions of the Department are mailed the day they are dated. In the case of an oral decision, personal service is the oral pronouncement of the decision at the hearing.) The petition for judicial review should name the Department of Development as respondent.

This notice is part of the decision and incorporated therein.

Note: Sections 227.49 and 227.53, Wis. Stats., 1985-86