
STATE OF WISCONSIN

CIRCUIT COURT

MARATHON COUNTY

In re the Petition to Incorporate
the Village of Weston,
Marathon County

Case No. 93-CV-371

Vilas E. Machmueller, Representative of
the Petitioners for the
Incorporation of the Village of
Weston, and said Petitioners,

Petitioners

and

City of Wausau,

Intervenor

vs.

City of Schofield,

Intervenor

DETERMINATION OF THE WISCONSIN DEPARTMENT OF ADMINISTRATION

INTRODUCTION

It is the function of the Department of Administration to prepare findings and to make a determination as to whether the territory petitioned for incorporation meets the applicable standards prescribed in Section 66.016, Stats. Having completed that task, the analysis and findings are attached.


In summary, it is the DETERMINATION OF THE DEPARTMENT OF ADMINISTRATION that, when considering the petition submitted to the Circuit Court by the petitioners, under Wis. Stats. sec. 66.016:

- STANDARD 1 (a), Homogeneity and Compactness - Met
(Discussed from pages 4 to 43)
- STANDARD 1 (b), Territory Beyond the Core - Met
(Discussed from pages 43 to 48)
- STANDARD 2 (a), Tax Revenue - Met
(Discussed from pages 49 to 57)
- STANDARD 2 (b), Level of Services - Not Applicable
(Discussed on page 57)
- STANDARD 2 (c), Impact on the Remainder of the Town -
Met (Discussed on pages 57 to 66)
- STANDARD 2 (d), Impact on the Metropolitan Community -
Met (Discussed on pages 67 to 79)

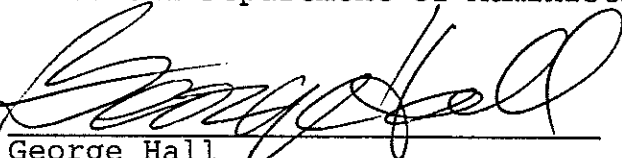
All of the above is discussed in greater detail in the body of the Determination. The Determination of the Department, as prescribed by s. 66.014 (9) (e) 2, Stats., is as follows:

The petition as submitted shall be granted and an incorporation referendum held.

Dated this 31st day of October, 1995.
By the Wisconsin Department of Administration:



Mark Saunders
Hearing Examiner and Deputy Counsel
Wisconsin Department of Administration



George Hall
Director of Boundary Review
Bureau of Intergovernmental Relations
Wisconsin Department of Administration

cc: Vilas E. Machmueller, Petitioners' Representative
Richard J. Weber, Attorney for Petitioners
Sarah Kamke, Mayor, City of Schofield
Philip J. Freeburg, Attorney
John Hess, Mayor, City of Wausau
William Nagle, City Attorney, City of Wausau
Therese M. Freiberg, Attorney, City of Wausau
Donna J. Seidel, Clerk of Courts, Marathon County
Nathaniel E. Robinson, Administrator, Division of
Energy and Intergovernmental Relations, Wisconsin
Department of Administration
Martha Kerner, Director, Bureau of Intergovernmental
Relations, Wisconsin Department of Administration
F. Thomas Creeron, III, Assistant Attorney General,
Wisconsin Department of Justice

ANALYSIS AND FINDINGS

The following analysis and findings relate to the "Standards to be applied by the Department of Administration," found in s. 66.016, Wis. Stats., as amended by 1991 Wisconsin Act 39.

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

STANDARD TO BE APPLIED

"The entire territory of the proposed village or city shall be reasonably homogenous 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 of such features as retail stores, churches, post office, telecommunications exchange and similar centers of community activity." Wis. Stats. sec. 66.016 (1) (a)

The Department believes that it may be informative for the reader to briefly characterize the way in which courts have interpreted the incorporation review requirements, particularly with respect to standard 1(a), for which the leading case is Pleasant Prairie v. Department of Local Affairs & Development (108 Wis. 2d 465, 322, NW 2d 486 (Ct. App. 1982); affirmed, 113 Wis. 2d 327, 334, NW 2d 893 (1983)).

Pleasant Prairie is clear regarding the allowable flexibility in factors to be considered in determining homogeneity and compactness. "...[H]omogeneity has a meaning apart and in addition to the factors listed [in s. 66.016 (1) (a)]..." (113 Wis. 2d 327, 337). Other characteristics, in addition to those specifically listed, may, therefore, be considered. For example, Pleasant Prairie specifically allowed consideration of land-use patterns, population density, employment patterns, recreation and health care customs.

Pleasant Prairie also clarifies that the incorporation statute mandates reasonable standards in regard to homogeneity and compactness, "...and other applicable criteria. If those characteristics which are required by sec. 66.016 (1) (a), Stats., are not met sufficiently to result in a finding of reasonable homogeneity and

compactness, findings in respect to the requirements of sec. 66.016 (1)(b) (territory beyond the core), and the public interest considerations of sec. 66.016(2) become irrelevant" (emphasis added). (Ibid., at 341)

Therefore, flexibility primarily applies to consideration of additional non-enumerated factors, rather than flexibility in elimination, removal or reduction of an enumerated factor below some acceptable reasonable level.

The facts surrounding each incorporation petition are different. However, in each case and for each requirement, the reviewer must be able to state that, even though the "situation" presented may not be entirely perfect (there may be some boundary, street circulation problems, or no health care facilities or telephone exchange), when taken as a whole, the facts support a finding of homogeneity and compactness. Recent determinations of the Department (since the 1980's) describe in detail reasons for finding whether or not an incorporation criteria is met or not met.

ANALYSIS

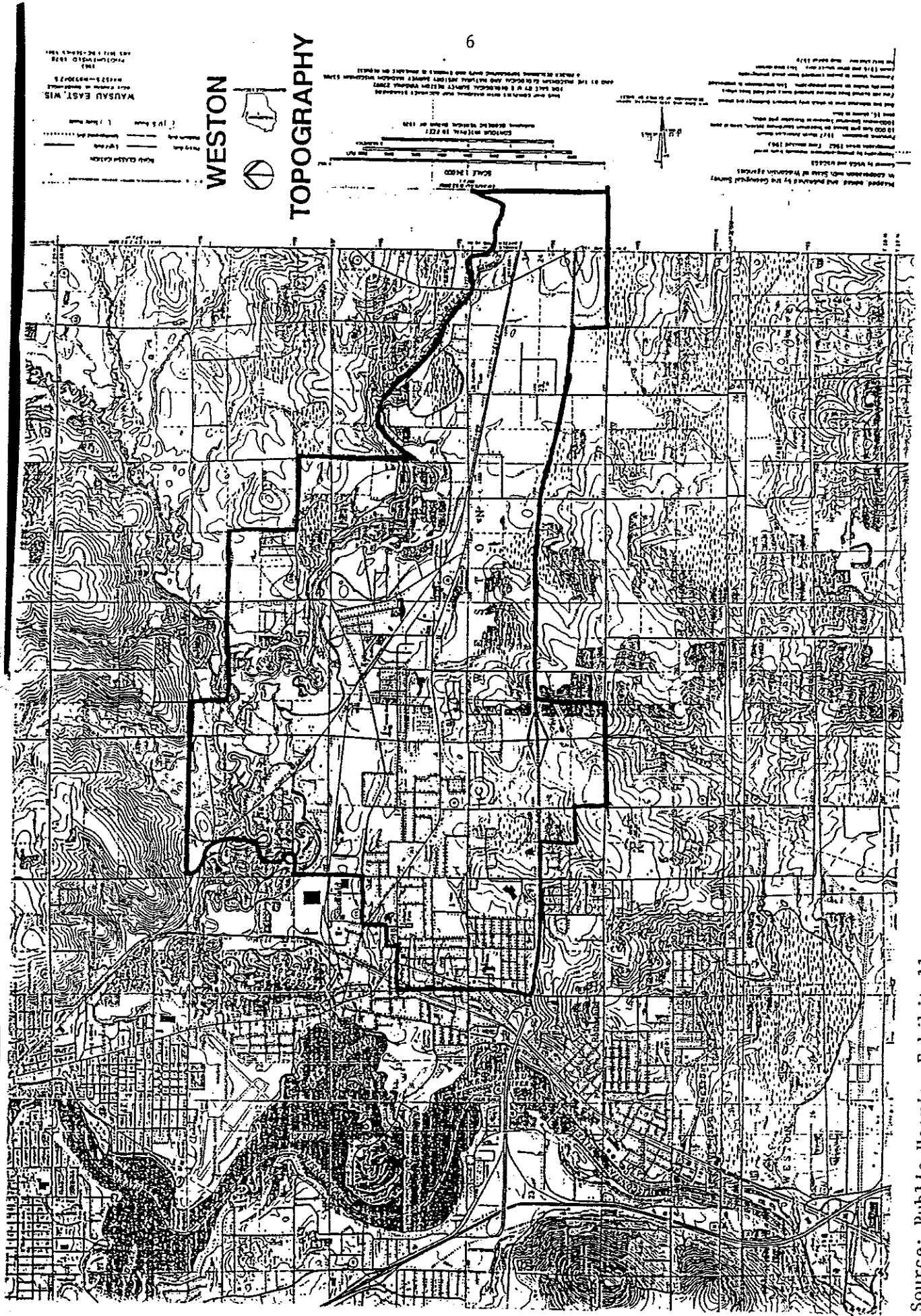
Natural Boundaries, Natural Drainage Basin, Soil Conditions

The entire Wausau metro region is part of the Wisconsin River watershed, and all drainage patterns lead towards the river (Map 1, page 6). Within this system, the territory proposed for incorporation lies almost entirely in the subwatershed of the Eau Claire River, and abuts the subwatersheds of Big Sandy, Cedar and Bull Junior Creeks (see Map 2, page 7).¹

Commencing in the south and moving in a clockwise manner around the petitioner's boundary, STH 29 (which for the most part forms the southern boundary of the proposed incorporation) and existing ridges cause surface waters either to drain north to the Eau Claire River, or southward into the remainder of the town of Weston via Cedar or Bull Junior Creeks, thence into the Wisconsin River. (Foth and Van Dyke, 1991, and Public Hearing Exhibit 11). At the intersection of STH 29 and CTH X, the boundary extends south into the Cedar Creek drainage for approximately one-quarter mile.

¹ A more detailed discussion and analysis of petitioners' boundaries can be found under the heading Previous Political Boundaries, beginning on page 21.

Map 1



MAUSSAU EAST, MISSOURI
MASSAU EAST, MISSOURI
MASSAU EAST, MISSOURI




WESTON
TOPOGRAPHY

Scale 1:62,500
CONTOUR INTERVAL, 10 FEET
ELEVATION, SEA LEVEL, 1000 FEET

Prepared, edited and published by the Geological Survey
in cooperation with State of Missouri, 1967
Compiled by Victor and Wallace
Photography by aerial photography from 1962 (from 1952)
1:75,000 scale
1000 feet and above are shown in brown and red
Elevations between 1000 and 2000 feet are shown in brown
Elevations below 1000 feet are shown in green
The map shows the town of Weston, Missouri, and the surrounding area.
The map is oriented with North at the top.

Source: Public Hearing Exhibit 11

Legend

-  WETLAND PROTECTION DISTRICT
-  PRIME ENVIRONMENTAL CORRIDOR
-  UTILITY CORRIDOR

Map 2



Scale: 1" = 1 mile

COMMUNITY PROFILE/ OPPORTUNITY ANALYSIS

Date: 4/1992

Fath & Van Dyke By: PES



The western boundary lies in the urbanized area abutting a corner of the village of Rothschild and the eastern boundary of the city of Schofield.

The northwestern corner of the petitioned territory extends beyond the north bank of the Eau Claire River, to include lands fronting on Northwestern Ave. Petitioner's boundary then extends eastward past Camp Philips Road before crossing the confluence of the Eau Claire River and Big Sandy Creek, and includes developing/developed subdivisions lying north of the Eau Claire River before extending south to meet the centerline of the Eau Claire River at Kramer Street. The boundary thence follows the centerline of the Eau Claire River to the town of Weston - Ringle town line.

The eastern boundary of the territory is defined by the town of Ringle - Weston town line, and the territory included represents developable land lying between a branch of Bull Junior Creek on the south and the southern bank of the Eau Claire River to the north. Although this eastern-most boundary is less than one mile in length, it includes the only highway interchange with rail access and uncontaminated land in Marathon County (Marathon County Planning Department, Wausau Area Chamber of Commerce, 1995).

Watershed and Groundwater Resources

Surface and groundwater features in the Weston area are greatly influenced by the impact of glaciation on terrain. The combination of interconnecting streams and lakes are characteristic of a glacially arranged drainage system (Foth and Van Dyke, 1991). Groundwater reserves are replenished through this drainage system in the Weston area.

While groundwater reserves, held in aquifers of glacial drift, are adequate in most parts of the county to meet domestic water demand, this is not the case for the Weston area. The bedrock of the Weston area is located unusually close to the surface, limiting groundwater capacity (Foth and Van Dyke, 1991, Town of Weston Zoning Ordinance, 1992). Not only does this create a limited supply of groundwater, but combined with the area's porous soils, it also increases the potential for groundwater contamination. This situation caused the town to implement policies and regulations to mitigate potential groundwater contamination problems.

Environmental Corridors

Five primary environmental corridors², all following waterways, pass through the town of Weston (two run through

² Environmental corridors are collections of natural resources typically found along waterways or drainage areas. They contain some type of

the proposed village territory, shown previously on Map 2 page 7. Environmental corridors in the proposed village include the Eau Claire River and Sugar Creek Corridors (described in more detail below), while those lying outside the petitioned territory in the remainder of the town include the Bull, Cedar Creek and Wisconsin River Corridors.

The Eau Claire River Corridor contains a variety of wetlands, woodlands and grasslands that provide outstanding wildlife habitat. The river is home to several types of game fish and provides one of the few opportunities for canoeing in the area. The natural resources of the Eau Claire River provide a setting for existing multi-purpose trails and several river-based parks (Foth and Van Dyke, 1992).

Sandy Creek Corridor flows through the northern portion of the proposed village into the Eau Claire River. Like the Eau Claire River Corridor, Sandy Creek is home to a series of wetlands, woodlands and grasslands necessary to support wildlife habitat. Sandy Creek is within a wetland protection district, and will remain protected should incorporation occur (Foth and Van Dyke, 1992).

Soils and Topography

The topography of Marathon county is dominated by gentle rolling plains with the central part of the county, most notably the Rib Mountain and North Weston area, being more hilly. These hills are attributed to the down cutting of the Wisconsin River and its tributaries. The glacial till carried into the Wisconsin by the Eau Claire and Rib Rivers has resulted in the gently sloping plains that characterize Weston and much of the area south and east of Wausau.³

As shown previously by Map 1, page 6, the northernmost tier of sections of the town of Weston are dominated by hilly, wooded terrain. The steep slopes make much of the area unsuitable for development. Moving south towards the boundary of the proposed village, the topography abruptly levels off and the terrain becomes much more open, providing a natural separation between the urbanized and

water feature (river, stream, lake, or wetland) and may be bounded by areas of steep topography, flood plains, and other distinctive features. Woodlands, grasslands and other native plants are commonly found in primary environmental corridors as well. The environmental corridor concept stems from Section 208 of the Federal Clean Water Act, which requires that states limit the provision of publicly financed sanitary sewer systems to only those lands with soil conditions capable of supporting urban development.

³ Foth and Van Dyke, 1992, and Public Hearing Exhibit 11.

undeveloped area in the north sections of the town of Weston.

Predominant soil types in the territory proposed for incorporation include the Fenwick-Reitbrock-Rozellville, Meadland-Mosinee-Dancy and the Mahtomedi-Grayclam-Meehan associations. Each are delineated on Map 3, page 11. The Fenwood and Meadland associations are found in various types of topography in stony and loamy soils on ground moraines and bedrock controlled uplands. As Map 3 indicates, these soil types are found in the extreme north and south of the proposed territory (Foth and Van Dyke, 1992 and Public Hearing Exhibit 11).

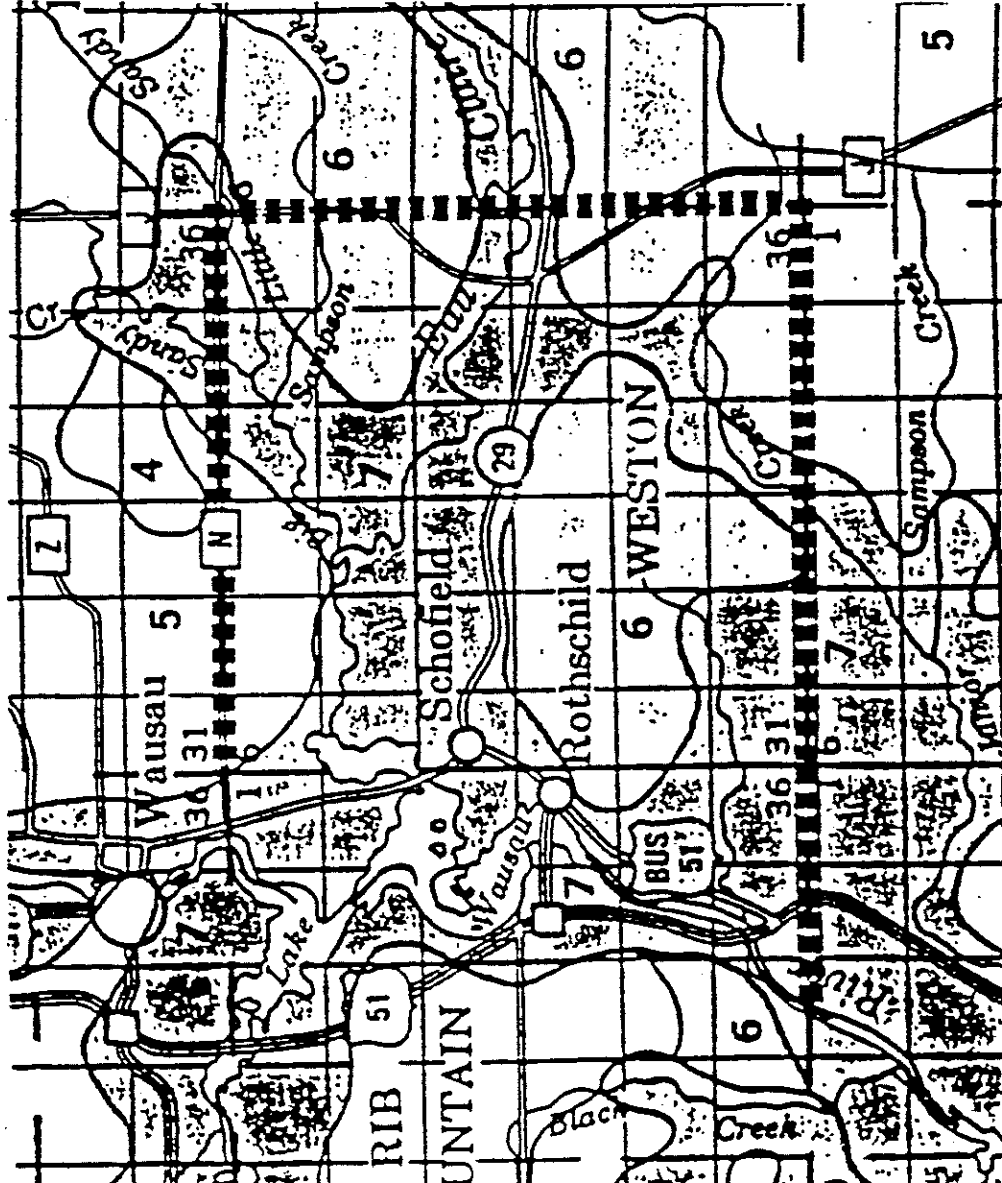
The Mahtomedi association is the most prevalent soil type in the proposed territory, found primarily in a band running across the entire area proposed for incorporation, roughly from Big Sandy Creek to just south of Hwy. 29. The Mahtomedi association is characterized by a sandy, porous base which provides for good drainage for all topography except very flat surfaces. The flat topography of the most urbanized portion of the territory, illustrated by Map 1, page 6, requires that special attention be given to controlling the release of pollutants that could potentially affect well water quality. Should further urbanization occur, the extension of municipal water and public sewer is recommended and encouraged by the town's current master plan.

Wetlands

Map 2, page 7, prepared by Foth and Van Dyke, portrays the wetlands inventoried by the Wisconsin Department of Natural Resources (DNR) in 1987, and updated in 1992. Primary types include: Broad leaf deciduous plants greater than 20 feet typically consisting of black ash, elm, silver maple, willows and young green ash, often located in areas that lack the appearance of surface water, and emergent wet meadows (narrow and broad leaf persistent), populated by cattails, grasses and asters (DNR, 1992).

The greatest concentrations of wetlands in the proposed village are found along the banks of the Eau Claire River. There are several smaller wetlands that straddle the southern boundary of the proposed village. These lands have also been inventoried and identified as protected corridors in the town's most recent land use plan, prepared in 1990 (also demarcated as WPD on Map 16, page 59, the town's zoning map). Many of the town's existing wetlands are wooded and provide important habitats for nesting waterfowl and fish spawning activity (Foth and Van Dyke, 1992).

Weston Soils



LEGEND*

AREAS DOMINATED BY SOILS UNDERLAIN BY LOAMY GLACIAL TILL

- 1 Magor-Cable association: Deep, nearly level and gently sloping, somewhat poorly drained to very poorly drained, stony and silty soils on ground moraines
- 2 Withes-Marshfield association: Deep, nearly level and gently sloping, somewhat poorly drained and poorly drained, silty soils on ground moraines
- 3 Kanan-Hatley association: Deep, nearly level to steep, well drained and somewhat poorly drained, bouldery, cobbly, silty, and loamy soils on moraines and drumlins
- 4 Marathon-Myree-Moberg association: Deep, nearly level to moderately steep, well drained, somewhat poorly drained, and somewhat excessively drained, stony, gravelly, and silty soils on uplands and ground moraines
- 5 Fenwood-Rietbrock-Rozellville association: Deep, nearly level to steep, well drained and somewhat poorly drained, stony and silty soils on ground moraines and bedrock-controlled uplands
- 6 Meadland-Mosinee-Dancy association: Deep, nearly level to moderately steep, somewhat poorly drained, well drained, and poorly drained, stony and loamy soils on ground moraines and bedrock-controlled uplands
- 7 AREAS DOMINATED BY SOILS UNDERLAIN BY SILTY, LOAMY OR SANDY, ALLUVIAL, LACUSTRINE, OR OUTWASH DEPOSITS
 - Mahtomedi-Forum-Sturgeon association: Deep, nearly level to very steep, excessively drained, moderately well drained, poorly drained, very poorly drained, and somewhat poorly drained, sandy and silty soils on stream terraces, outwash plains, and flood plains
 - Chetek-Rotholt-Ozarte association: Deep, nearly level to steep, somewhat excessively drained, well drained, and somewhat poorly drained, loamy and silty soils on outwash plains and stream terraces
 - Mahtomedi-Graycalm-Meshan association: Deep, nearly level to very steep, excessively drained, somewhat excessively drained, moderately well drained, and somewhat poorly drained, sandy soils on outwash plains, stream terraces, and glacial lake plains
- AREAS DOMINATED BY ORGANIC SOILS THAT ARE MUCKY THROUGHOUT OR ARE MUCKY IN THE UPPER PART AND ARE UNDERLAIN BY SILTY OR LOAMY DEPOSITS
- 8 Cathro-Saaleyville association: Deep, nearly level, very poorly drained, mucky soils in depressions on ground moraines, outwash plains, and glacial lake plains

U.S. DEPARTMENT OF AGRICULTURE
 SOIL CONSERVATION SERVICE
 THE RESEARCH DIVISION OF THE COLLEGE OF AGRICULTURAL AND LIFE SCIENCES
 UNIVERSITY OF WISCONSIN

GENERAL SOIL MAP

Flora, Fauna and Endangered Species

Marathon County is situated on a "tension zone": most of the forests north of the county are northern hardwoods (sugar maple, yellow birch) while southern hardwoods (oaks and red maple) are more common in southern Wisconsin. These zones converge in the central region of the county, which makes Weston home to both forest types. Low land hardwoods, such as elm, ash and cottonwood are also common in the central region of the county. Wetlands and their associated habitat are discussed in more detail above. In addition to forests and wetlands, large tracts of agricultural land are also located on the fringe of the Weston Area (Foth and Van Dyke, 1992).

Appendix 1 in the Environmental Assessment for the proposed incorporation lists the various species of wildlife, both aquatic and land based, found in and around Weston (Foth and Van Dyke, 1990). The continued presence of these species, as with any area experiencing urban development, is subject to continued habitat loss. Under the provisions of s. 29.415, Stats., Wisconsin assumes responsibility for conserving native wild animals and plants, and for taking steps to enhance their continued survival and propagation for the aesthetic, recreational and scientific benefits for future generations.

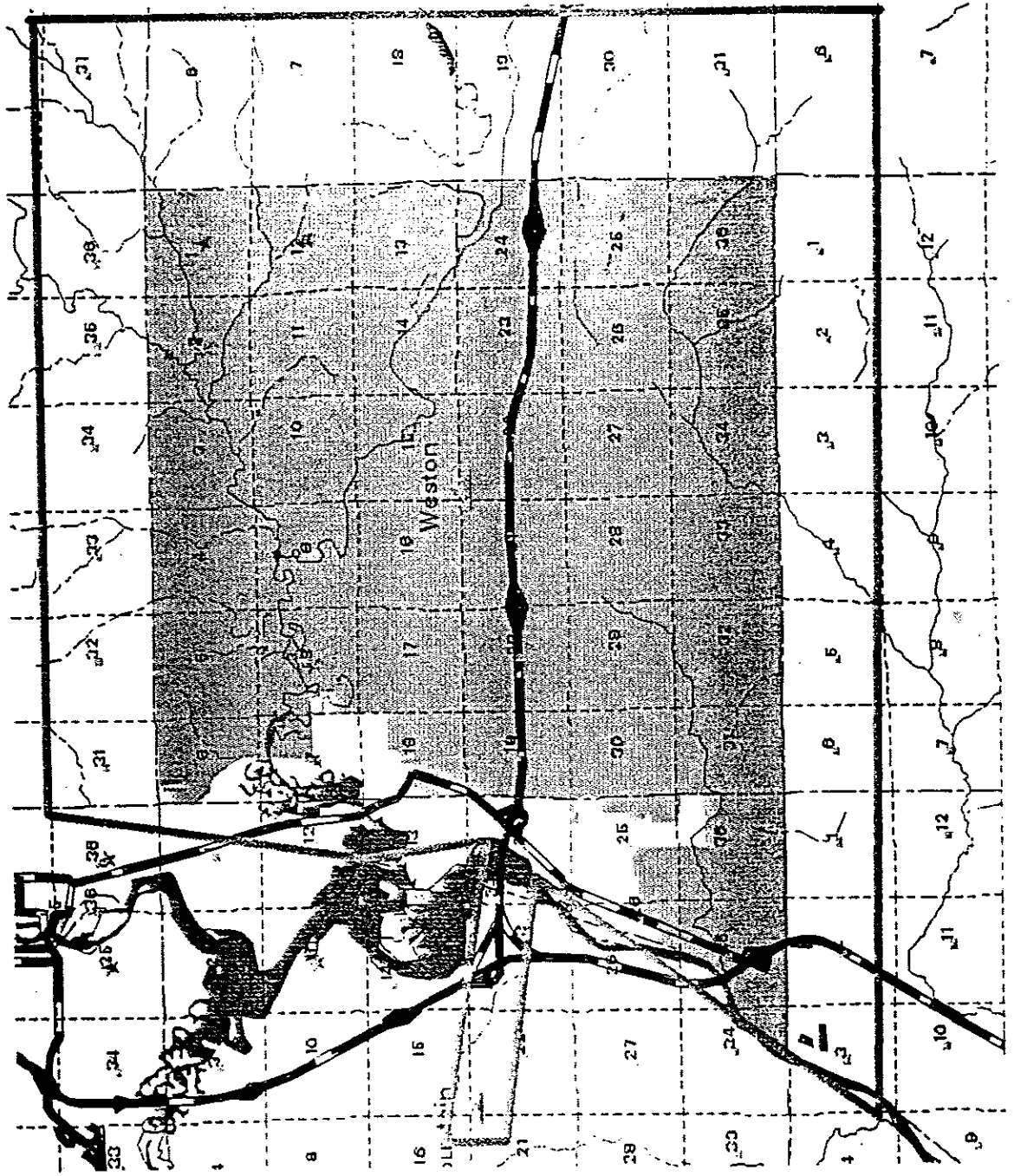
The DNR, by administrative rule, has established an endangered species and threatened species list. "Endangered species" means any species whose continued existence as a viable component of this state's wild animals or wild plants is determined by the Department to be in jeopardy on the basis of scientific evidence. "Threatened species" means any species of wild animals or wild plants which appears likely, within the foreseeable future, on the basis of scientific evidence to become endangered. (ss. 29.415 (2) (a) and (b), Stats.).

DNR lists the following endangered species for the Weston area; Map 4, page 13 shows the general location of endangered species occurrences in the Weston area:

- Snowy Campion, a plant commonly found in the Fern Island Park area.
- Redside Dace, a fish found in several creeks in the Weston area.
- Black Redhorse, a fish found in creeks and rivers in and around Weston.
- Wood Turtle, found in the streams and adjoining wetlands of several environmental corridors.

Map 4 General Locations of Endangered Species in Weston Area

▲ & ★ = BCD Endangered Resources Occurrences
 — = bcd search area



Source: WIDNR

Scale: 1"= 3300 feet



The DNR has also classified portions of the Eau Claire River and Sandy Creek as "high quality natural communities", with the resources to support a high level of plant and animal life. The DNR strongly suggests local and regional entities place a high priority on the protection of these natural areas (DNR, 1993). The town has responded to the DNR's suggestion by placing the rivers and the adjacent land area within a Wetland Protection Overlay District.

Designated Parks and Recreation Areas

Petitioners list several public parks, school recreation facilities and private recreation areas in the proposed territory. In 1992 the town hired the consulting firm of Foth and Van Dyke to prepare an outdoor recreation plan for Weston in order to provide adequate facilities for town residents and identify future outdoor recreation needs. Recreation plans are used by the DNR in determining eligibility for the Open Project Selection Process, which in turn determines who receives LAWCON and ADLP grants allocated by the DNR for outdoor recreation aid programs. Current facilities noted by the petitioners and portrayed by Map 5, page 15, (from Public Hearing Exhibit 11) and the 1992 plan include:

Public parks maintained by the town:

- Kennedy Park; a 38.8 acre community park containing year-round recreational uses including baseball and soccer fields, tennis and basketball courts, sand volleyball courts, two lighted ice rinks with a warming room, a covered picnic area and children's playground facilities. It is the town's most heavily used park facility.
- Williams Park; a 2.5 acre community park containing playground equipment, a softball diamond, a volleyball court and several picnic areas. The park receives moderately heavy use from the surrounding neighborhood.
- Rogan Park; a 38 acre undeveloped park bisected by the Eau Claire River. The 1992 report indicated that soccer facilities were to be constructed in Rogan Park near existing utility mains. Due to the proximity of urban services, other facilities could be installed as the surrounding area develops.

The Foth and Van Dyke report did note that all children's equipment in Weston Parks needed to be improved to meet federal American Disability Act standards.

Map 5

Legend

TOWN PARKS

- GASKA
- J.F. KENNEDY
- ROGAN
- WILLIAM'S

SCHOOL RECREATION AREAS

- D.C. EVEREST H.S.
- D.C. EVEREST M.S.
- EAU CLAIRE RIVER NATURE CENTER
- HEEREN RD. SCHOOL FOREST
- WESTON E.S.

COUNTY PARKS

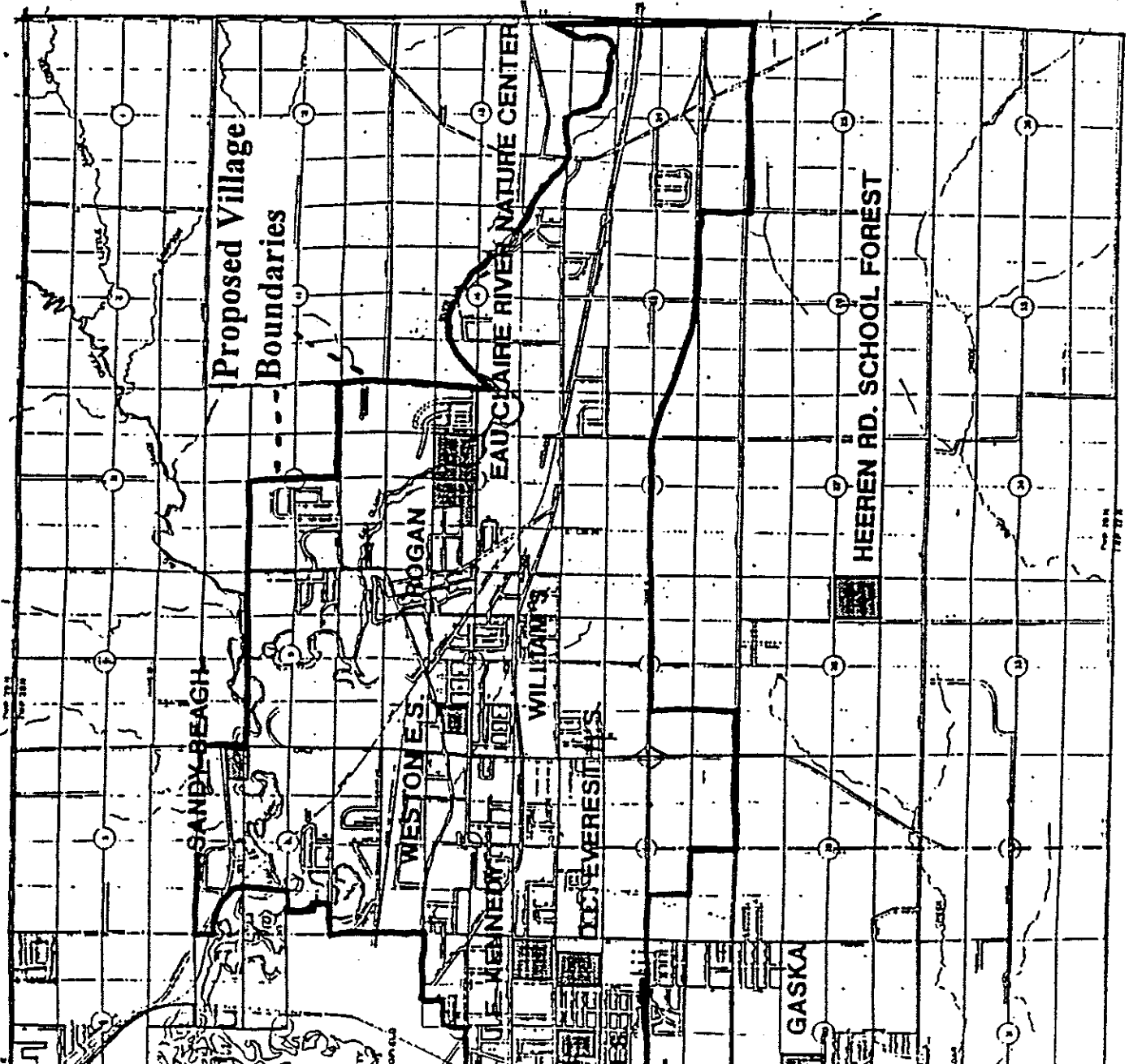
- SANDY BEACH

Scale: 1" = 4445 feet

EXISTING PARK AND RECREATION AREAS

Date: 4/1992

Eoth & Van Dyke



County parks within the proposed village, and also shown on Map 5, include:

- Sandy Beach Park; a 16.1 acre park used mainly for swimming, contains several beaches along the Eau Claire River, bathroom facilities, a covered picnic area and a volleyball court.

School Recreation Areas within the proposed territory and shown on Map 5, include:

- D.C. Everest High School; a 34 acre recreation area is available for public use when not being used for school activities. The facilities include tennis courts, baseball fields, soccer fields, and an enclosed hockey rink.
- D.C. Everest Middle School; the middle school also provides a 34 acre recreation area and includes many of the amenities provided by the high school, including a football stadium with a 1/4 mile running track.
- D.C. Everest School Forest (Eau Claire River Nature Center); a 48 acre conservancy area utilized as an environmental learning center for students, but provides a system of hiking trails and picnic facilities that are available for public use.
- Weston Elementary School; a 30 acre area that includes playing fields, a skating rink, and a large children's playground facility.

The Weston Park Department shares in the maintenance responsibilities of the Weston Elementary School site, handling the soccer fields and skating rink. All other recreational facilities on school grounds are the responsibility of the D.C. Everest School District.

Privately owned recreation facilities include:

- Kelly Athletic Club located on the corner of Ross Avenue and Felch Road, which provides a lighted softball facility used extensively by area leagues.
- Wiggley Field on Schofield Avenue provides a lighted softball diamond, indoor and outdoor volleyball courts, and rest room facilities.

Properties of Historical, Archaeological or Architectural Significance

No properties currently included in the National Register of Historic Places are located within the proposed village (based on communications with the State Historical Society of Wisconsin).

In addition to sites listed on the National Register of Historic Places, an inventory of archaeological sites in

Wisconsin is maintained by the State Historical Society. Those files indicate no archaeological sites within the proposed incorporation area.

The State Historical Society also maintains a listing of historic buildings. Four structures are located within the proposed village area. These include:

- A residence on the north side of Mallard Court near Alderson Street (SW 1/4 of the SW 1/4 of section 8).
- The CTH "SS" Eau Claire River Bridge (SW 1/4 of the SW 1/4 of section 10).
- The Full Gospel Tabernacle at the southeast corner of Schofield Avenue and Old Costa Land (SE 1/4 of the SW 1/4 of section 15).
- Saint Agnes Catholic Church, located on Zinzer Road, .1 mile south of old STH 29 (NW 1/4 of the NE 1/4 of section 23).

No information (such as recognition by town or county ordinances, etc.) is available that would indicate that these historic sites are being reviewed for National Registry status, or otherwise protected as development occurs in the area, either in the area proposed for incorporation or in the remainder of the existing town.

Present and Potential Transportation Systems

Transportation Plans and Existing Facilities

In September of 1994, Marathon County Planning Department, the designated Metropolitan Planning Organization (MPO) for the Wausau metro area of Marathon County, released its annual Transportation Improvement Plan (TIP) for 1995-1997 biennium, identifying and prioritizing area transportation projects. Depending on the project, prioritization can be based on functional classifications of streets, traffic volume and concurrence with approved projects to minimize interruption of service.

The expansion of Camp Phillips Road along sections 20 and 17 (the main north-south arterial in the proposed village, discussed in more detail below) to four lanes is the number 2 priority in the entire Wausau metro area for 1995. The project includes a 0.9 mile section of Camp Phillips Road, between Schofield Avenue and Bernard Street. The local unit of government involved will be expected to split the projected \$500,000 cost of the project with the federal government. The TIP also identified the expansion of curb and gutter along Jelinek Avenue (Alderson to Alta Verde) along with sidewalk extension and construction of a pedestrian underpass. The \$185,000 project costs will be shared between the state and local units of government (Wausau MPO Transportation Improvement Program, September, 1994).

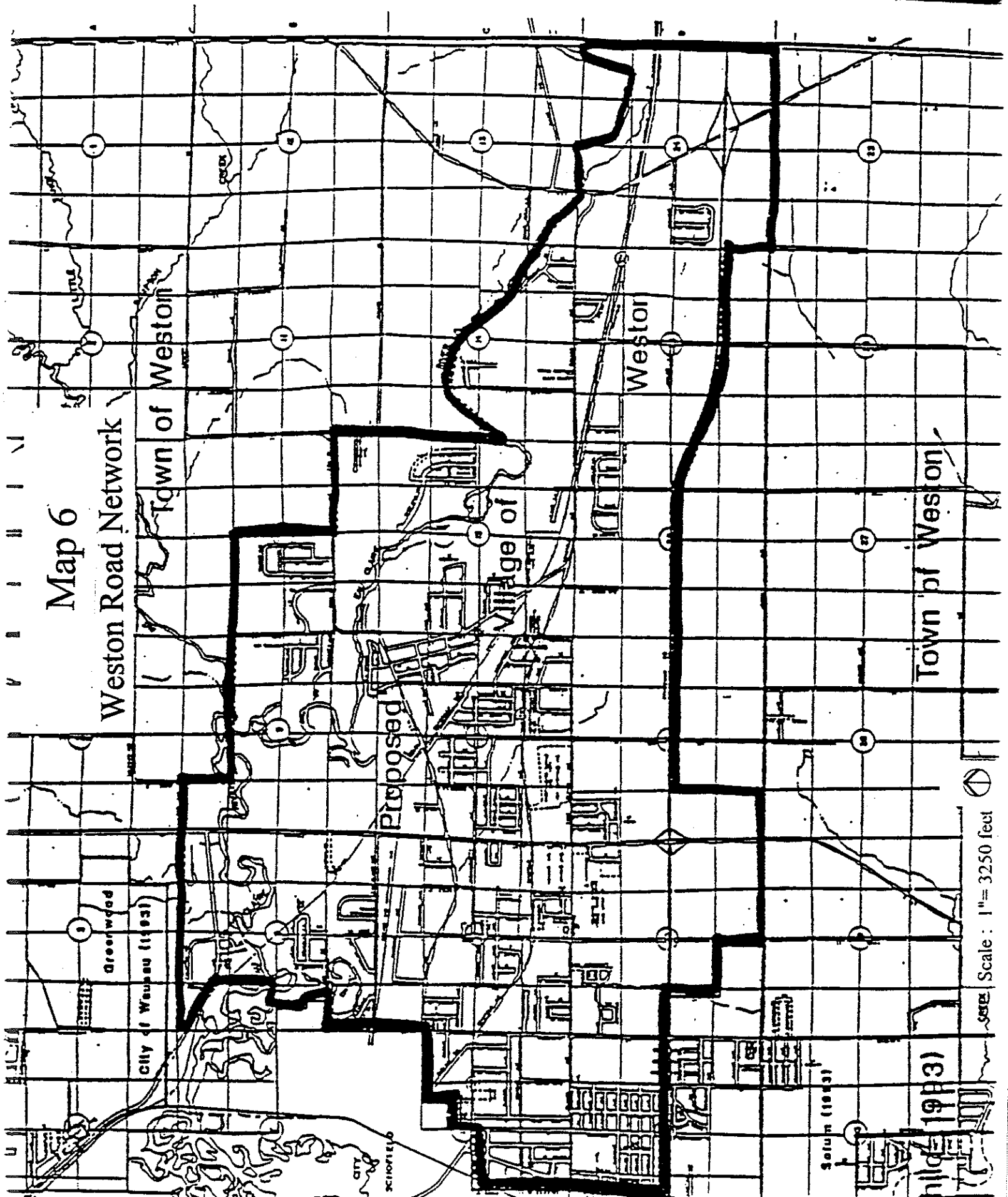
Two major projects totaling \$3,200,000 in the city of Schofield are identified in the TIP as well. Business 51 (Schofield Avenue) and the Eau Claire River Bridge in the city of Schofield are to be improved and replaced for safety reasons in 1995 and 1996. While consultants for Schofield contend that all costs of these projects (upgrading its main street to modern standards) will be met by the city, the TIP states that federal and state moneys will cover 90% of the costs. The District DOT office concurs that much of the financing will be provided by state and federal funds (Wausau MPO Transportation Improvement Program, September, 1994).

Streets and Highways

The territory proposed for incorporation contains a transportation network, portrayed on Map 6, page 19 that includes 67.5 miles of roads (Town of Weston Engineering Department). These roads consist of state and county trunk highways as well as local streets. With the exception of some roads in the mobile home parks, all roads within the proposed territory are public thoroughfares.

Map 6

Weston Road Network



Roads within the proposed village as a whole are in good condition, although some seem to be in need of resurfacing or patch work.

Streets providing primary access to petitioners' territory include: Schofield Avenue (Cty. Hwy. JJ) and Jelinek Avenue which run east and west throughout the proposed village and eventually intersect with Business 51, which runs through a small section of the proposed territory, but more importantly connects to the village of Rothschild, Hwy. 51, and the cities of Schofield and Wausau. Camp Phillips Road (Cty. Hwy. X) runs north-south through the center of the proposed village, providing access to the city of Wausau and to Hwy. 29. The newly constructed Hwy. 29 and County "J" interchange is included in the eastern portion of the proposed village.

The local road layout provides access to at least one of the main arterials that traverse the proposed territory. Curb, gutter and sidewalk is provided on major thoroughfares within the proposed village. Although the local road network does not follow a strict grid fashion, traffic congestion appears to be limited to Business 51 running into Schofield, mainly during peak travel hours. Ryan Street, which runs north-south through the eastern one-half of PLSS Sections 20 and 15, is proposed for extension across the Eau Claire River, and will provide more direct access to the Trotter Lane residential area, which currently must use either CTH SS or CTH J to cross the Eau Claire River (Exhibit 11, page 5).

As noted by the petitioners and intervenors, the recently constructed Hwy. 29 creates a man-made point of separation for the proposed village (except for the territory immediately south of and adjacent to, the Hwy. X and Hwy. J interchanges). The DOT has designated Hwy. 29 as the primary east-west route across central Wisconsin. Long term plans call for Hwy. 29 to be expanded to a four lane, limited access highway from Green Bay to Chippewa Falls (intersecting with I-94) by the year 2000 (WisDOT 1995-97 Biennial Budget).

State Trunk Highway 29 is to become the northern endpoint of Federal Interstate 39 (currently USH 51) when it is dedicated in 1995. I-39 will provide a continuous route from the Hwy. 29 interchange to Rockford, Illinois. I-39 will then continue south to Bloomington, Illinois (WisDOT, 1995). These transportation upgrades may further enhance the attractiveness of the Wausau area for commerce and the development that comes with it. The two interchanges

included within the proposed territory will likely be direct recipients of development pressures brought on by the aforementioned highway improvements.

The town does not currently participate in the Wausau Area Transit System (WATS). A route system analysis released in 1992 encouraged the town to reconsider participation in WATS, based on the results of constituent surveys in the area (Multisystems, Inc., 1992). The town was part of a pilot project in 1990, but withdrew after less than a year of participation. Should incorporation occur, a new village could reassess the need for mass transit service within and to the village.

Rail Transportation

A rail line runs NW-SE through the territory proposed for incorporation (See map 6, page 19). Once owned by Chicago and Northwestern Railroad Company (C & NW) the track formerly connected the cities of Green Bay and Wausau. Service was discontinued in 1992, and the rails were subsequently removed except for the section remaining in the town of Weston (which connects with the active Wisconsin Central LTD, which runs north-south, and parallel to the Wisconsin River). The town of Weston purchased this track and right-of-way lying within the town in 1993 with the intent of providing rail access to a planned industrial park at the newly constructed Hwy. 29-County Hwy. "J" interchange (thereby providing combined road and rail access). Should incorporation occur, all but a small fraction of the track (in the NW corner of the town) would become part of the village (pers. comm., Bureau of Harbors and Railroads, WisDOT, 1995).

The line outside the town boundaries running east to Green Bay was purchased by the DNR and the counties through which it traverses, and is being converted to a nature trail (the Mountain-Bay Trail). Part of Weston's purchase agreement would allow the DNR to use right of way along the track to extend the trail through the proposed territory (pers. comm., Bureau of Harbors and Railroads, WisDOT, 1995).

Previous Political Boundaries and Boundaries of School Districts

Territory petitioned for the proposed Village of Weston is part of the urbanized Wausau metropolitan area in central Marathon County. The territory, shown on Map 7, page 22, lies entirely within the survey township of Weston (1993 population 10,964), and includes approximately 13.4 square miles of area (land and water) with a resident population of

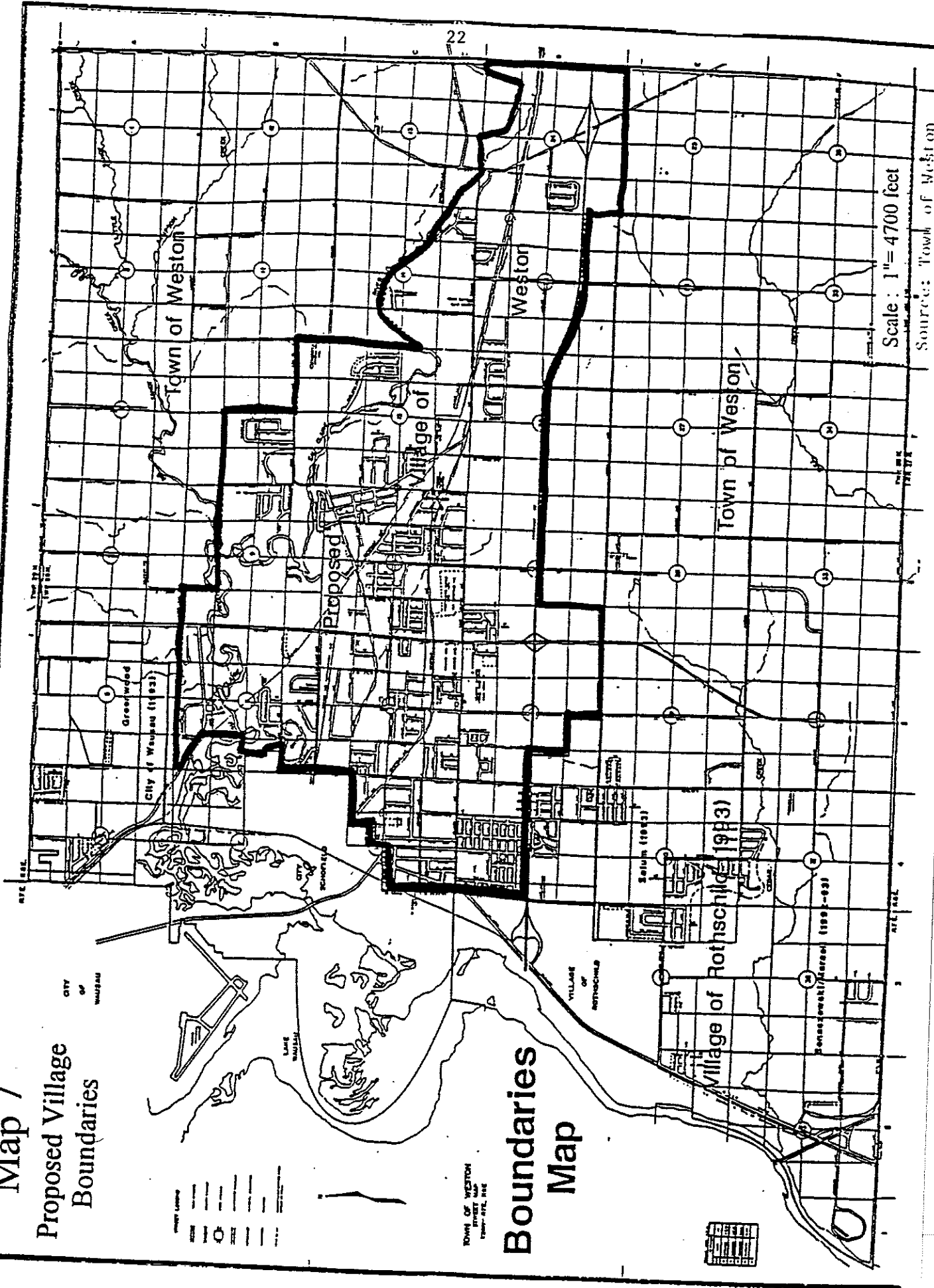
Map 7

Proposed Village Boundaries

- Proposed Village Boundary
- Existing Village Boundary
- City of Weston Boundary
- Town of Weston Boundary
- Village of Rothschilde (1993) Boundary
- Village of Westor Boundary
- Village of Setum (1993) Boundary
- Village of Rothschilde (1993) Boundary
- Village of Setum (1993) Boundary
- Village of Rothschilde (1993) Boundary
- Village of Setum (1993) Boundary

TOWN OF WESTON
STREET MAP
1997-98, 2000

Boundaries Map



Scale: 1" = 4700 feet

Source: Town of Weston

9,639 people (from petition filed with the Marathon County Circuit Court, and U.S. Census, 1990).

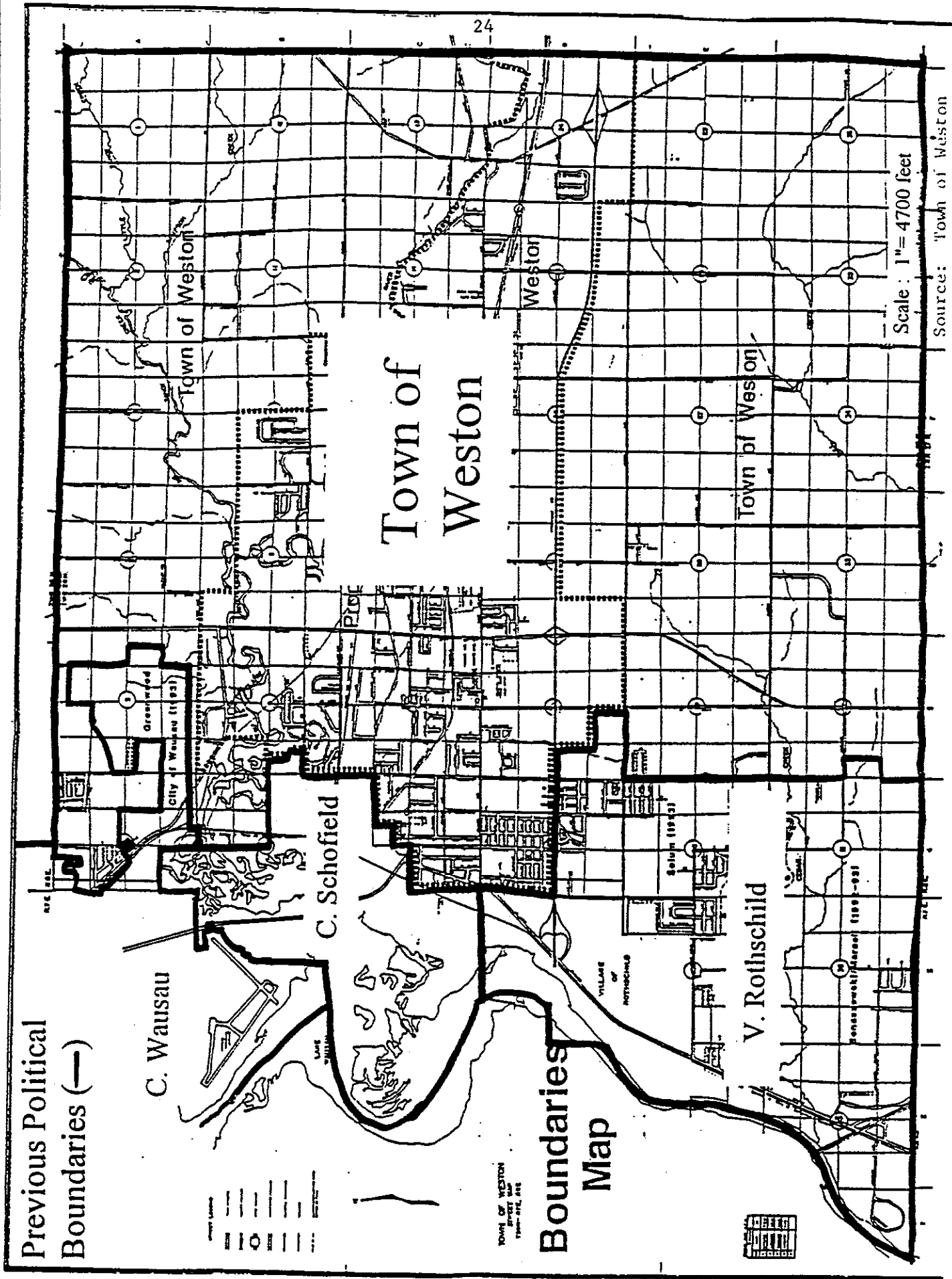
As portrayed by Map 8, page 24, the proposed village abuts the City of Schofield (1993 population 2,429) to the west and the Village of Rothschild (1993 population 4,984) to the south west. The City of Wausau (1993 population 38,036) is located to the north, separated from the proposed village by a strip of the town of Weston. The town of Kronenwetter (1993 population 4,953) lies south of the proposed village, separated by a portion of the town of Weston remnant.⁴

Referring to Map 7, page 22, beginning at the northwest corner of the territory petitioned for incorporation, the boundary begins at Northwestern Ave. immediately north of the Eau Claire River floodplain, at the northwest corner of Public Land Survey System Section (hereinafter called PLS Section) 8 and extends due east following the north line of PLS Section 8, which also denotes the southerly limit of an environmental corridor, also including the intersection of Northwestern Ave. and Camp Phillips Road, a major north/south access route for the territory proposed for incorporation. Continuing eastward through PLS Section 9, the boundary drops down one-quarter of a section to include a developed/developing residential area lying north of the Eau Claire River in the east one-half of PLS Section 9 and the west one-half of PLS Section 10. Extending south following the mid-point of PLS Section 9 to the lower quarter of PLS Section 9, the line then turns eastward so as to include residential development lying on Christiansen Ave. and a residential subdivision lying north of Trotter Lane, stopping at the centerline of the existing channel of the Eau Claire River. From this juncture, the northern boundary of the territory follows the Eau Claire River to the Ringle town line at a point located nearly at the southeast corner of PLS Section 13.

Continuing in a clock-wise manner, the boundary extends south along the Ringle town line to the southeast corner of PLS Section 24 before running due west to the southwest corner of PLS Section 24. This area includes all four quadrants of the STH 29 and CTH J interchange, along with the former right-of-way of the Chicago and Northwestern Railroad acquired by the town so as to maintain rail access.

⁴ All population estimates are from the Demographic Services Center, Wisconsin Department of Administration).

Map 8



Previous Political
Boundaries (---)

C. Wausau

C. Schofield

Town of
Weston

Boundaries
Map

V. Rothschild

Scale: 1" = 4700 feet

Source: Town of Weston

At the southwest corner of PLS Section 24, the petitioned boundary moves north one-quarter section, and continues west for nearly 3 miles, following the southerly right-of-way of limited-access highway STH-29. One-quarter mile before reaching Camp Phillips Road, the boundary extends south to the south line of PLS Section 20, and the westerly quarter-quarter of PLS Section 21. At the north-south center line of PLS Section 20, petitioners' boundary meets the corporate limit line of the village of Rothschild, territory recently annexed from the town of Weston, and currently undeveloped.

Petitioners' boundary with the village of Rothschild continues westward along the centerline (based on the Marathon County Plat Book description), of STH-29 to the westerly line of PLS Section 18, thence north along Volkman Street to the northwest corner of the southwest one-quarter of PLS Section 18. Volkman Street, as it extends north from STH-29, continues as the boundary with the village of Rothschild until it reaches the northeast corner of the northwest one-quarter of PLS Section 19, which is also the southeast corner of the city of Schofield.

From this point, petitioners' boundary is contiguous with the city of Schofield, and continues northward along Volkman, which is also the westerly boundary of PLS Section 18, crossing the Wisconsin Central Railroad tracks (when Volkman becomes Disher Street), stopping at the northwest corner of the southwest one-quarter of PLS Section 18. From this point, the boundary continues easterly to the mid-point of PLS Section 18, jogs north approximately one-quarter-quarter of a section until it continues eastward through the middle of the northeast one-quarter of PLS Section 18 until reaching the eastern boundary of PLS Section 18, thence running north along the section line to a point lying at the intersection of Mallard Court and Alderson Street, which is also the southwest one-quarter of the southwest one-quarter of PLS Section 8. The boundary now jogs east approximately one-eighth of a section along Mallard Court following parcel boundaries, thence north crossing the Eau Claire River and associated flood plain until it reaches Northwestern Avenue, thence extending northwesterly along Northwestern Ave until reaching the point of beginning.

Petitioners' boundary with the city of Schofield has remained relatively stable, except for incremental lot by lot annexations, and for the annexation of territory now containing the Schofield Industrial Park, which is situated primarily in the southeast one-quarter of PLS Section 7.

Anomalies with the boundary, due to urbanization overlaying the Public Land Survey System section lines, appear to have persisted for decades in some cases, without materially affecting the character of development. The Tuckaway Apartments situated at the northwest corner of the southwest one-quarter of PLS Section 18, are literally cut off by railroad right-of-way from direct access to petitioner's territory. Similarly, the north line of the southwest one-quarter of PLS Section 18 separates one house on Depot Street from a similar house in the city. Also in PLS Section 18, one lot on the north side of Rosenbach Avenue annexed to the city, while all of the other parcels on this block remain part of the town and incorporation petition. Where STH Business-51 intersects with Schofield Avenue, the intersection and a sign for Schofield Plaza lie in the city, while the shopping center itself lies in petitioners' territory, and buildings on the north side of Schofield Avenue lie in the city until Schofield Avenue reaches the centroid of PLS Section 18.

The Brief of Intervenor City of Schofield in Opposition to Petition, ("Brief in Opposition") alleges 7 potential service provision problem areas (described in Exhibit 27, p. 2) caused by the anomalies described in the preceding paragraphs, and states "the incorporation of Weston will make these areas permanently fixed" (Brief, p. 2). Only one anomaly, Tuckaway Apartments, alludes to a specific service issue which can be handled through mutual aid agreements, and would not have arisen in the first place had the city insisted upon annexation in return for sewer and water service at the time the apartments were built. (Weston alleges that the owner petitioned for annexation but was turned down for annexation yet was provided with service anyway, "Petitioners' Reply Brief," page 4).

The other statements contained in Exhibit 27, p. 2, do not in the judgment of the Department raise issues of particular significance. The statement that boundaries will be permanently fixed ignores various alternative routes to boundary changes provided by Chapter 66, Stats. The difference as to whether these discrete parcel-by-parcel issues matter to the Department is whether the parties themselves have sufficient statutory authority, were incorporation to occur, to fix the situation on their own motion, without recourse to involvement of a 3rd party, such as Marathon County or the Wisconsin Department of Administration. Using as an example the Department's very recent 1995 Stone Bank Determination, the Department determined that the incorporation petition should be refiled because similar incremental problems resulted in the

creation of town islands that could not be easily extinguished simply by merger of town of Merton islands with the town of Delafield due to lack of current authority for counties to adjust town boundaries. Stone Bank was issued prior to the February 28, 1995, Supreme Court decision regarding de facto town islands in Wagner Mobil (Wagner Mobil, Inc. v. City of Madison, 190 Wis. 2d 585), and therefore reflected court of appeals dicta that, until Wagner Mobil, prohibited the creation of town remnants even though they may be contiguous to another unincorporated town. In the case of this petition, were incorporation to occur, no town island would therefore be created and there is ample authority for both municipalities, acting on their own without the involvement of any other party, to address such boundary issues as may command their attention.

Schofield asserts numerous times that boundaries between the town and city are so intertwined as to be indistinguishable. "Petitioners' Reply Brief," page 4, asserts that "boundaries that now seem so difficult and cumbersome to administer have been in existence for so many years and are so well established and understood that there have been absolutely no problems between the city of Schofield and the Weston public maintenance and safety personnel in being able to identify the location of these boundaries and to continue governmental services to those areas."

Aerial photo number 206, "Marathon County, Wisconsin," at a scale of 1 inch equals 400 feet, dated April/May, 1990, helps to illustrate two areas of confusion, one of which, the Tuckaway Apartments, has been previously discussed. The other possible place of confusion lies in the residential neighborhood at the centroid of PLSS Section 18, where the boundary follows residential streets and parcel lot lines along Rosenbach and Pine until reaching Bernard Ave., where it runs east along Bernard and then north along Alderson, the two streets encompassing the margin of the Schofield Industrial Park, before entering the undeveloped woodlands at the northeast corner of the industrial park and floodplain of the Eau Claire River.

Within the petitioners' territory, mixed commercial uses front both sides of STH Business 51, beginning at the point where STH Business-51 exits from Rothschild and enters Weston at Jelinek Ave., until reaching the Schofield Ave. intersection, which is in the jurisdiction of Schofield. It is not apparent that one is entering Schofield proper except by turning left, following STH Business-51 under the railroad bridge and westward away from petitioners' territory. The north side of Schofield Avenue at the

intersection of STH Business 51 does lie within the jurisdiction of Schofield for a distance of approximately 1/8 mile, until both sides of Schofield Avenue, at Normandy Street, lie within the territory petitioned for incorporation. It is the distance of 1/8 mile where businesses of the two communities lie opposite one another which intervenors believe lie "...directly across the street from either the village of Rothschild or the city of Schofield ("Brief in Opposition," pp.3-4).

Schools

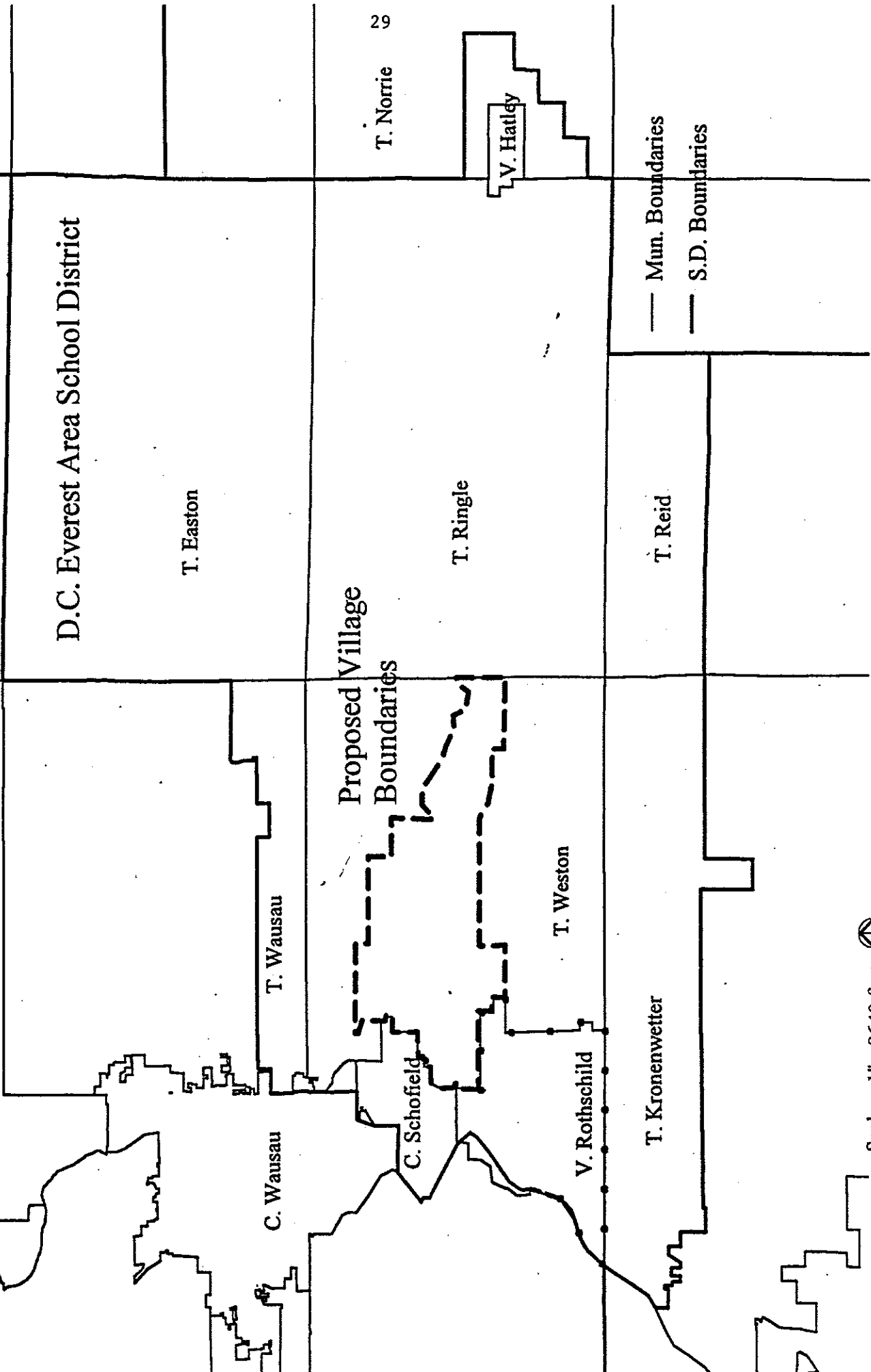
The territory proposed for incorporation lies within the D.C. Everest School District. The district provides public education services to ten municipalities in the southeastern Wausau metro area (See Map 9, page 29). District facilities include seven elementary schools, a junior high, a senior high and an environmental center (discussed earlier in the recreation section); of these facilities, the high school, middle school, Weston Elementary, administration building and the environmental center all lie within the boundaries of the proposed village (See Map 10, page 30). The proposed village is itself served by the Schofield, Weston and Riverside elementary districts.

All three schools within the proposed village also serve territory outside the proposed boundaries and have extensive meeting and recreational facilities available for public use (covered in more detail under "Parks and Recreation"). The two elementary schools (Schofield and Weston) serving this urbanized district are located within neighborhoods, allowing students living within close proximity to walk to school.

The Everest Nature Center, another school district facility, lies within the proposed village along its northeastern boundaries. The facility's close proximity to more heavily developed sections of Weston provide a focus for recreation and community activities.

Statistical information provided by the D.C. Everest District indicates that all schools within the system are operating below 90% capacity (see Table 1, page 31). In 1991, the district remodeled or expanded five elementary schools, as well as the senior and junior high schools to maintain capacity levels below 90% (D.C. Everest S.D.). The district has determined that this level of attendance must be maintained in order to provide quality educational services to the student population. Should elementary attendance school rise above the 90% limit due to

Map 9

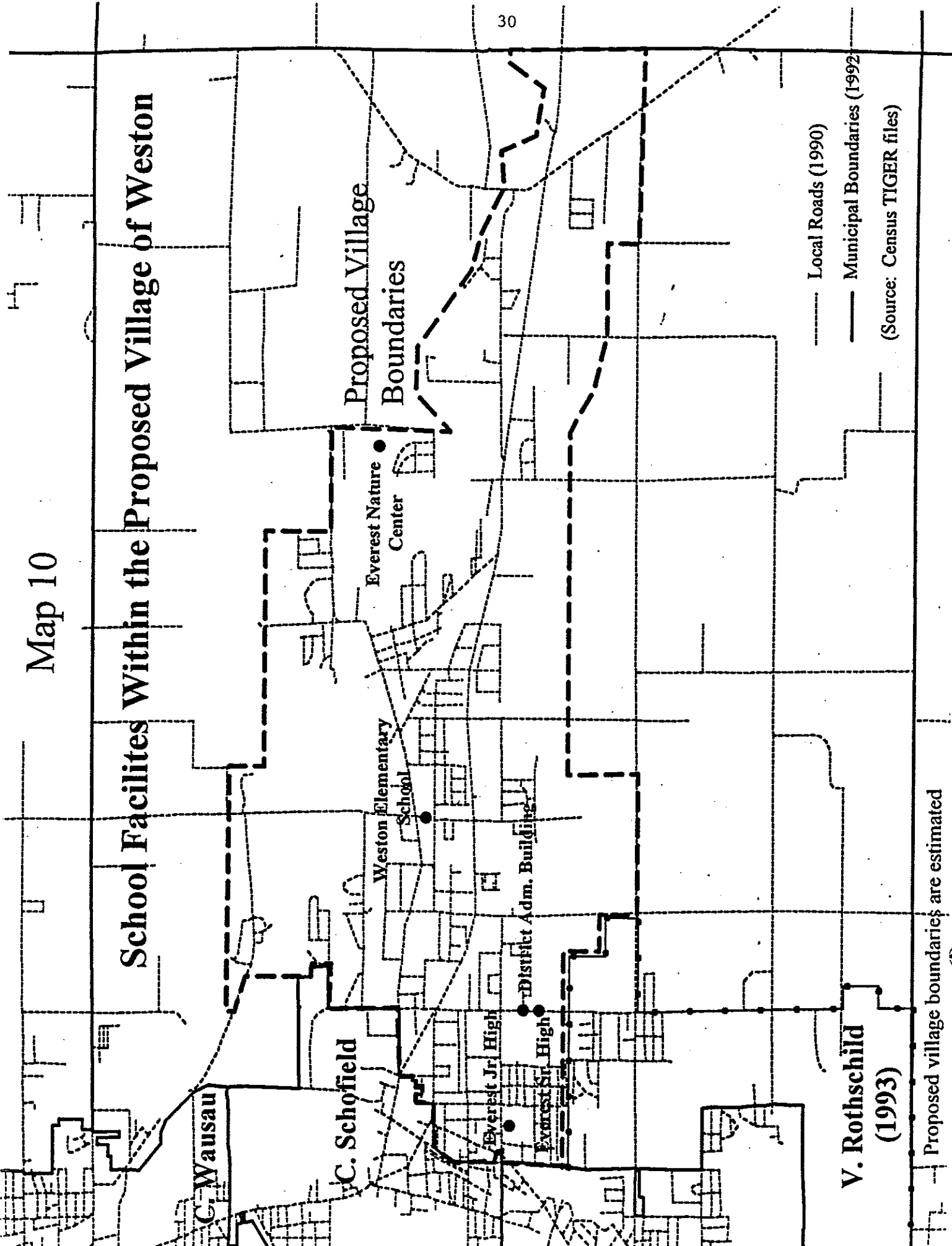


Scale : 1"= 9640 feet



Map 10

School Facilities Within the Proposed Village of Weston



----- Local Roads (1990)
----- Municipal Boundaries (1992)
(Source: Census TIGER files)

Proposed village boundaries are estimated

Scale: 1" = 4225 feet

Table 1

D.C. EVEREST AREA SCHOOL DISTRICT THIRD FRIDAY COUNT

DISTRICT RECAP	Change			Change			Change			AVERAGE SURVIVAL		
	89-90	90-91	91-92	92-93	93-94	94-95	95-96	96-97	Rate	Survival	Rate	Survival
Grades	339	389	338	344	326	326	326	326	0.0%	0.0%	0.0%	336
K	328	305	341	317	328	328	328	328	-8.3%	-4.7%	-8.3%	308
1	320	314	320	349	338	338	338	338	2.4%	6.6%	2.4%	315
2	332	308	331	320	361	361	361	361	1.3%	3.4%	1.3%	310
3	385	337	340	342	333	333	333	333	4.8%	4.1%	4.8%	356
4	352	375	370	352	340	340	340	340	2.5%	-0.6%	2.5%	367
5	343	351	383	377	359	359	359	359	1.4%	2.0%	1.4%	394
6	360	383	407	425	410	410	410	410	11.8%	8.8%	11.8%	387
7	377	359	381	405	425	425	425	425	-0.3%	0.0%	-0.3%	400
8	387	384	359	389	420	420	420	420	1.9%	3.7%	1.9%	408
9	353	380	382	350	376	376	376	376	-2.0%	-3.3%	-2.0%	408
10	354	365	388	372	355	355	355	355	1.1%	1.4%	1.1%	429
11	379	358	347	389	380	380	380	380	-0.3%	2.2%	-0.3%	414
12												
Subtotal	4,609	4,608	4,687	4,731	4,751	4,751	4,751	4,751				4,803
Specials	91	62	94	27	19	19	19	19				19
TOTAL	4,700	4,670	4,781	4,758	4,770	4,770	4,770	4,770				4,836
Change	-30	111	-23	12	14	14	14	14				14

Source: D.C. Everest Area School District

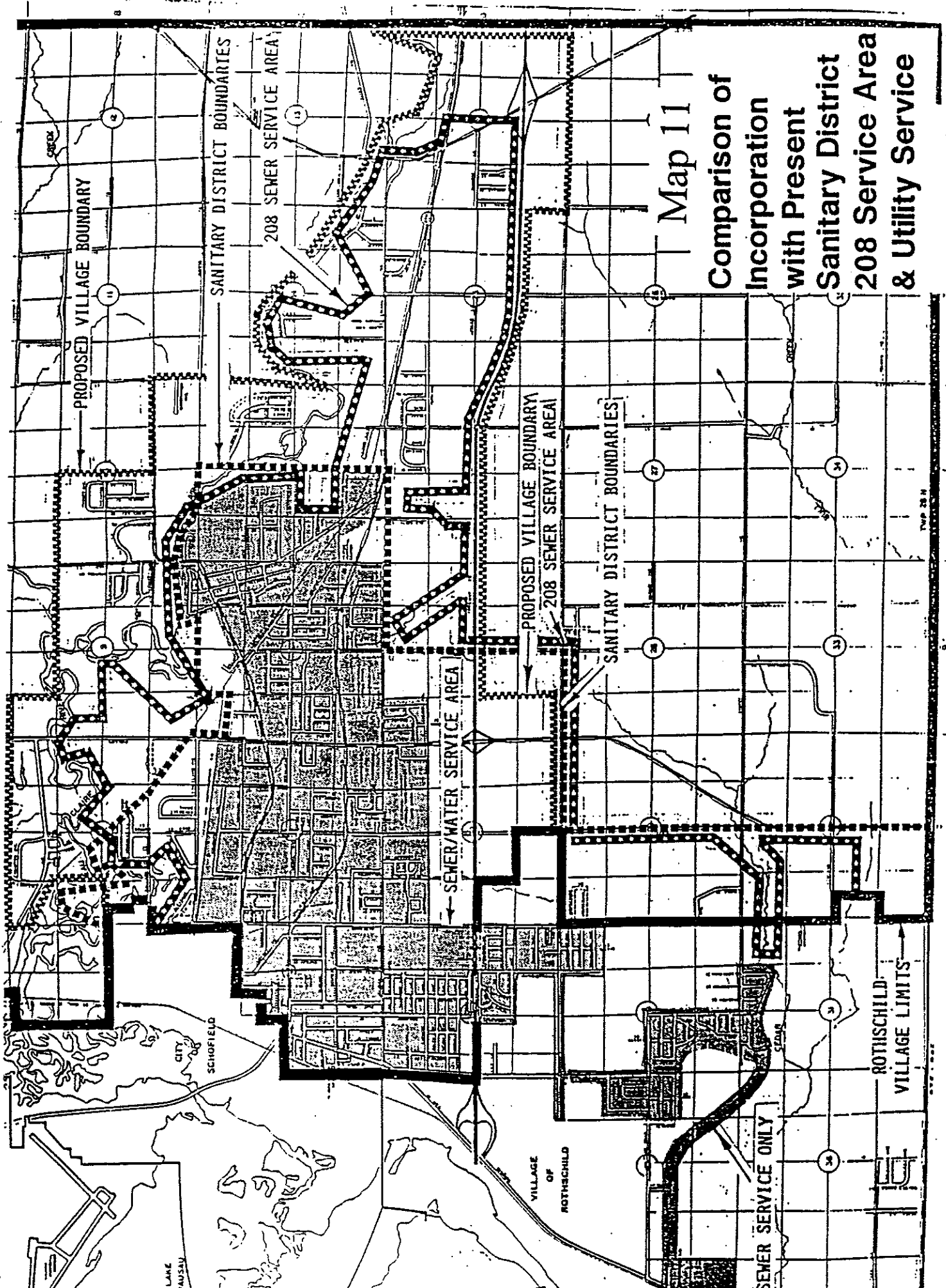
concentrated residential development in a particular locale, the district is prepared and able to shift elementary school attendance boundaries to handle such an enrollment surge. The district anticipates average annual increases of 27-30 students (the average over the past 6 years) to continue in the near future. The district has experienced an annual equalized value increase of 5% over the past six years as well, which has been reflected recently in reduced millrates for property owners in the district (1993-94 Annual Budget Report, D.C. Everest Area School District).

Boundary changes for school districts are now governed entirely by Chapter 117, Stats. There is currently no statutory requirement that school district boundaries be coterminous with municipal boundaries. School districts have historically demonstrated a reluctance to trade tax base for more rational attendance boundaries, but the D.C. Everest District is prepared to possibly alter the current boundaries should over crowding become an issue. However, it appears that there is no effect upon school district boundaries *per se* should incorporation of the village take place.

Waste Treatment and Water Supply Districts

The town of Weston created a sanitary district in 1960 and a water utility in 1969 (Public Hearing Exhibits 15e and 16e). The Weston Sewer and Water Utility (consolidated in 1991) would continue to provide water and sewer service to the proposed village. The 3-person staff that provides field operation services would remain intact as well (Public Hearing Exhibits 23 and 16e).

Sewer and water service is supplied to 2200 accounts (residences, schools, commercial sites, etc.) in the town, all of which are located in the proposed village. The utility also has approximately 600 accounts (1500 people) outside the town in the village of Rothschild. The Rothschild accounts are part of 3000+ acres annexed by the village in the early 1990's. The infrastructure for these accounts was installed by the town prior to annexation. Map 11, page 33, represents the existing Section 208 sewer service area boundary and the proposed village boundary, which in several instances run coterminous to each other. Waste water flows from Weston to the Rib Mountain Metropolitan Sewer District for treatment. Like the Wausau treatment facility that serves Schofield, the Rib Mountain system scored well on it's DNR "1992 Compliance Maintenance Annual Report Summary". The Rib Mountain facility currently has ample capacity available to handle growth in the area.



Scale : 1"= 3840 feet

In 1992, the town commissioned Becher-Hoppe, Inc., consulting engineers, to develop a 40 year wastewater interceptor plan for the town utility services. The study (see Map 12, page 35) area included the less developed area of the proposed village and territory now within the village, but still served by Weston utilities. The study identified areas to receive urban services that are now included within the proposed village. Many of the infrastructure recommendations of the this report were included in a potential tax increment finance district (TID) for the town in a report prepared by Anderson and Associates in 1993 (this list is reproduced in the Draft Environmental Assessment, as Appendix 6). Due to annexation by the village of Rothschild, the proposed TID and improvements would be less than proposed in the 1993 report. If the recommendations of this plan were implemented, much of the territory proposed for incorporation would have access to public sewer and water.

Shopping and Social Customs

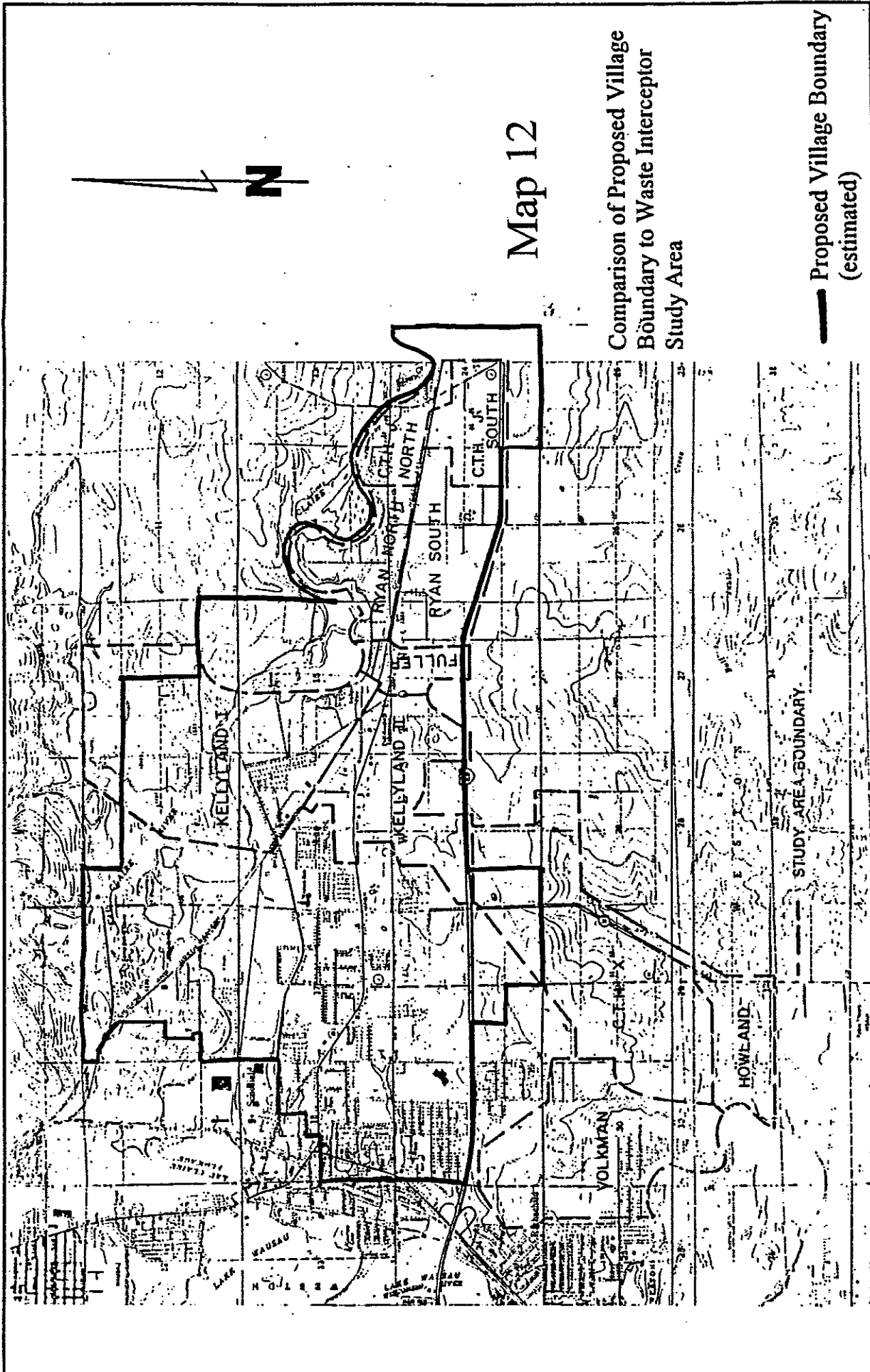
Summary of Current Land Uses

Residential Land Use

A wide variety of residential land uses exist within the proposed village. These land uses directly relate to the existing and emerging shopping and retail trade functions (discussed in greater detail in subsequent paragraphs in this section) now present in the territory proposed for incorporation. Housing types range from large scale multi-family apartment units and mobile homes to modest single family homes on small lots to more upscale large lot single family homes in a more rural setting.

The 1990 town master plan (Map 14, page 46) reflects a mix of multi-family and single family neighborhoods in the most urbanized sections of the proposed incorporation (PLS Sections 16,17,18). Lot sizes in most cases are less than 1/2 acre. Median census block housing values range from \$40,000 to \$85,000. Residential areas are intermixed with commercial and school facilities, and are all accessible to one another via the existing street system (Town of Weston 1990 Land Use Plan, and Public Hearing Exhibit 11).

Moving away from the urban area adjacent to Schofield (in a northeasterly direction, beyond the Eau Claire River) lot sizes become larger, and homes (outside the existing sanitary district boundaries) on private wells and sewers become more common but, nevertheless, in compliance with the town's well head protection ordinance.



Map 12

Comparison of Proposed Village
 Boundary to Waste Interceptor
 Study Area

— Proposed Village Boundary
 (estimated)

Scale: 1" = 4700 feet

The proposed village contains a diverse housing stock; with much (44%) of the housing existing in 1990 having been constructed between 1970 and 1979. Indicative of the middle class make up of the area, over 80% of these homes are two or three bedroom dwellings.

Schools

As discussed previously, Weston Elementary, the D.C. Everest Junior and Senior High Schools as well as the district administration building are all located within the proposed village (see Map 10, page 30). All three schools serve territory outside the proposed boundaries and have extensive meeting and recreational facilities available for public use (covered in more detail under "Parks and Recreation"). The two elementary schools (Schofield and Weston) are located within neighborhoods, allowing students living within close proximity to walk to school.

Commercial/Retail Activity

Petitioners provided the Department with an extensive listing of over 250 business within the proposed village (Public Hearing Exhibit 11, p. 7). Petitioners have further delineated these businesses under seven headings. They include: Food and drugs (serving daily or weekly needs), financial services (banks and credit unions), general merchandise (clothing, hardware and restaurants), general services (those used less frequently, such as rental equipment), automotive (repair, parts and sales) and industry (manufacturing and distribution centers). Several regional and national chain food and convenience stores are also located within the proposed territory (IGA and Target). Along with banking and financial services, other professional services such as medical clinics, dentist offices and hygiene and beauty centers are operated within the proposed village. A Volvo-Subaru dealership along with automobile parts stores and service stations provide for motor vehicle needs. Restaurants in the area include locally run establishments, such as pizza parlors and family style dining, as well as several national fast food chains. A sample listing of these businesses are included with the comprehensive list in Appendix 3 of the Draft Environmental Assessment.

Most of the commercial activity in the proposed village is located on or near five major roadways that supply access to much of the territory proposed for incorporation as well as providing linkage to the surrounding locales and major highways in the area. This road system provides access to Hwy. 51, newly improved Hwy. 29, and the cities and towns

surrounding the proposed village (the road network is discussed in more detail under "Streets and Highways"). These external linkages are to be expected within a metropolitan setting. Significant retail and commercial development, including shopping centers and strip malls are located on Schofield Avenue (Cty. Hwy. JJ), Jelinek Avenue, Business 51 (south of the intersection with Schofield Avenue, extending south approximately one-half mile to the village of Rothschild municipal limit line), Camp Phillips Road (Cty. Hwy. X) and Ross Avenue (Cty. Hwy. SS), all within the territory proposed for incorporation.

"Brief in Opposition," page 3, and Exhibit 27, page 4, disputes the substantial nature and variety of goods and services available, as well as their location. Aerial photo number 206, "Marathon County, Wisconsin," at a scale of 1 inch equals 400 feet, dated April/May, 1990, clearly illustrates the location and extensivity of retail and commercial activity.

Churches

There are five churches within the territory proposed for incorporation (Public Hearing Exhibit 11). They include two Lutheran, two Baptist and a Catholic church which are primarily located in the "core" of the proposed village. Representatives of these churches indicate to the Department that 50% to 80% of their parishioners live within the general area of incorporation (pers. comm., Dec., 1994).

Social Customs

In addition to the schools, recreation facilities and churches mentioned previously, civic organizations such as the Weston Junior Chamber of Commerce, the Schofield-Rothschild-Weston Optimists, as well as the then Weston Police Department, all sponsor annual events in addition to regular membership meetings. The following organizations sponsor activities are either based within the town, or have a significant number of Weston residents as members:

- Weston Homemakers
- Boy Scout Troops (2)
- Girl Scout Troop (1)
- Noon Optimist
- Lions International
- 4-H Clubs (8)
- Brownies
- Cub Scouts
- Parent-Teacher Organizations (Grade, Middle and High School)

Loyal Order of the Moose
 Pony League Baseball
 Little League Baseball
 Soccer Association
 Fire and Police Department Youth and Adult
 Education/Training Programs

Landfill/Waste Disposal Sites

The DNR's Registry of Waste Disposal Sites in Wisconsin, the state's master list of known solid and hazardous waste disposal sites, lists seven sites within the survey township of Weston (DNR, 1993). The town landfill (inactive since August of 1991), located in PLS Section 15, is the only site within the boundaries of the proposed village. The six other sites include two within and operated by the city of Schofield (PLS Section 7), three privately owned sites (PLS Sections 1, 6, & 35) and the village of Rothschild site, located in section 25 (see Appendix 4 of the Environmental Assessment).

None of the identified sites in the Weston area are listed in the latest edition of the DNR's Remedial Response Site Evaluation Report, which deals with waste disposal and spill sites throughout the state that may present an environmental, ecological, financial, or health threat to area residents (DNR, December, 1991). The status of these sites has not changed since the latest release of the publication (personal comm. with DNR, November, 1994).

Information provided by the petitioners and DNR indicate that the closing process for the Weston town dump has begun, with the town financing the entire mitigation process. This fall (1995) the gas extraction phase will be complete. The next step includes installing a clay layer over the landfill along with a plastic or polyurethane cap. Petitioners have provided for the cost of the closing and capping process (which is being handled by consulting engineers) in their proposed budget. Although the town initially allocated \$56,000 for fiscal year 1995 for remediation purposes, they subsequently borrowed \$1.3 million dollars to cover the total cost of the remediation project (Town of Weston Proposed Budget, 1995). Should incorporation occur, this debt will be apportioned along with other assets and liabilities following instructions set forth in s. 66.03, Stats.

DETERMINATION

Natural Boundaries, Natural Drainage Basins, Soil Conditions
 As previously described, petitioners propose a boundary which corresponds to many natural features, deviating from

natural boundaries so as to include existing urban development and developing areas which properly belong with a proposed village, or to exert jurisdictional control over transportation access points which are strong attractors of urban development.

The intervening city of Schofield appears to characterize the boundary from an incremental and inward perspective, rather than looking at the town as a whole in order to determine whether the boundary makes sense or not. (Brief in Opposition) This brief contains factual errors, such as "The northern boundary begins at the northwest corner of the proposed village just over a mile north of the Eau Claire River...", stating that natural features are not exactly followed everywhere around the periphery without considering why this might be the case. Referring to maps found in Exhibit 11 and reproduced in this Determination, "Data In Support of the Incorporation", beginning with Weston Topography, the General Soil Map, the 1990 Master Plan map, the Comparison of Incorporation with Present Sanitary District 208 Service Area and Utility Service map, all suggest that petitioners have reconciled competing issues by using, wherever possible, natural features to characterize their boundary. The choice of the northern boundary, for example, is clarified by inspecting the Weston Topography Map (Map 1, page 6), recognizing that the boundary in many instances follows the edge of the steep slopes and the centerline of the river, deviating so as to include developed and developable land, which arguably could be the responsibility of an incorporated jurisdiction.

Intervenors contend that petitioners' boundary is not congruent with the area-wide water quality Section 208 Sewer Service Area boundary. Comparing the "1990 Master Plan" with the "Comparison of Incorporation with Present Sanitary District 208 Sewer Service Area and Utility Service" maps contained in Exhibit 11 illustrates that the sewer service area boundary explicitly excludes steep slopes, environmental corridors and water bodies. This exclusion is confirmed by the Wausau Urban Area Sewer Service Plan for the Year 2000 (1981, based on 1978 data), prepared by the Marathon County Planning Commission. The two exceptions where developed and developable lands are excluded from the sewer service area is the eastern interchange of CTH J with STH 29 (where only one interchange quadrant is within the sewer service area), and the 3 developing residential areas along the northern border lying north of Northwestern Ave., Hewitt Avenue and Ross Street, and Trotter Lane. From inspection of aerial photographs and personal observation, these areas are being developed at densities that are not

materially different from existing sewer residential areas presently located within the sewer service area boundary. That these 3 northern areas and the other 3 quadrants of the STH-29 and CTH-J interchange are not presently included is very likely due to the age of the Wausau Urban Area Sewer Service Plan for the Year 2000, which has not been apparently updated for quite some time. (Updates normally occur at 5-year intervals, thereby maintaining a rolling, 20-year supply of developable land).

Transportation Facilities

Local roads in combination with state and county trunk highways serve to tie the territory together as a homogenous whole. The intersection of US Business 51 with Schofield Avenue (CTH JJ) lies within the city of Schofield, yet equally serves the proposed territory. Resolution of this issue could occur with or without incorporation by using any of the following statutory sections; ss. 66.022, 66.023, or 66,027, Stats., and does not significantly detract from the overall coherence of the petitioners' transportation system.

Previous Political Boundaries

The territory petitioned for incorporation logically includes the urbanized core of the town of Weston, and lies entirely within the existing town of Weston. City of Wausau and village of Rothschild signed border agreements (Exhibits 29 and 12) with the town of Weston, momentarily fixing the limit of annexation into the town by the these two municipalities.

Petitioners' boundary is congruent with the village of Rothschild beginning at the southwest quadrant of the CTH X and STH 29 interchange, and extends west along STH 29, turning north at Volkman and extending north until reaching Jelinek. The agreement between Rothschild and Weston notwithstanding, the boundary between the two would appear to present no insuperable land use or intergovernmental cooperation issues.

Wausau's corporate boundary does not touch that of the petitioners, but moved closer following the successful 1993 "Greenwood" annexation located in PLS Section 5 (see Map 8, page 24). This left approximately 6 quarter-quarter sections remaining in the town of Weston immediately beyond petitioners' boundary directly north of the city of Schofield industrial park and south of the city of Wausau, and connected to the remainder of the town by a narrow corridor traversing the hill directly north of the rear lot line of parcels fronting on Hampton Ave., congruent with the north line of PLS Section 8.

Along with concerns previously raised by city of Schofield, there is the contention that this area constitutes an inverse of the classic "balloon on the end of a string" annexation (so-termed by the judicial rule of reason governing municipal annexations). The rationale for this remnant can be easily explained. With reference to Aerial Photograph No. 178, Marathon County, Wisconsin, scale 1 inch to 400 feet, photography dated April and May, 1990, published by Marathon County Planning Department, it is apparent that this town remnant is only accessible and usable by the city of Schofield, as it is surrounded on three sides by the Eau Claire River and associated floodplain. These completely separate the parcel from Wausau and the petitioners, as well as from any access from Northwestern Avenue. Maps contained in Exhibit 11 also illustrate this point, as do the maps contained in the "Wausau Urban Service Area Sewer Service Plan for the Year 2000." This situation constitutes an open invitation to Schofield to either annex this undeveloped parcel should a petition be submitted, or to acquire it and attach it using either ss. 66.021 or 66.025, Stats. Petitioners could have included this territory with their petition, but evidently chose not to because they can not access it to serve it.

Boundaries of School Districts

In past determinations the Department has stated that boundaries of school districts are unaffected by municipal incorporation and are therefore neutral with respect to incorporation or consolidation reviews. Although schools are an important determinant in molding community allegiance through scholastic, social, and recreational activities (topics which are treated in the following subheading entitled "Shopping and Social Customs"), the determination of their boundaries is presently entirely separate from the process of municipal governance.

In order for school district boundaries to change to reflect altered land use, social and demographic patterns, the affected districts, acting on their own, must reach consensus. For that reason, school district boundaries *per se* are considered to be neutral with respect to municipal incorporation. Nevertheless, schools are important elements of neighborhood unit planning principles since the writings of Clarence Perry (1929) and others, and provide a fundamental basis for neighborhood connectivity and social cohesion within the town of Weston.

Shopping and Social Customs

Petitioners enumerate a variety of businesses, goods and services available in the territory that serve to provide identity to the proposed village. It is apparent from the exhibits presented by petitioners that much more than just convenience retail establishments are present in Weston, a characterization important for contributing to a separate identity for a community within a metropolitan area (Allouez, 1985).

Included within Exhibit 11, "Data in Support of the Incorporation," and discussed previously on page 37, is a list of churches located within the territory petitioned for incorporation. In past incorporation determinations, social activities centered around churches found in proposed villages were specifically noted by the Department as evidence of a sense of community identity (Hewitt, 1973; Newburg, 1973). In Rockfield, 1964, as in Fitchburg 1982, the failure to have a continuously operating church was found to suggest that religious and social activities took place elsewhere, and was determinative. The absence of year-around churches as a source of community identity was also a factor in Delavan Lake, 1989, and Powers Lake, 1992, wherein the Department found these residential enclaves to lack a unique social and community identity.

Along with the schools and parks/recreational facilities churches also provide the traditional activity sites for community youth and adult programs previously enumerated on pages 37 and 38, and the basis for a social identity of Weston's own making.

While Weston's early history is obviously tied to adjoining Wisconsin River communities (see "Weston Centennial," submitted as supplemental hearing material by the petitioners), it is evident that population and equalized value increases since the early 1960's mirror the development of a broad range of land uses within the urbanized core of the town of Weston. These include residential, schools, churches, businesses, commercial and industrial establishments, along with designated recreational parks and natural areas. This suggests that a separate identity is not "aborning," but is currently present and very real. Therefore, the homogeneity and compactness criterion is deemed to be met.⁵

⁵ With respect to the community center requirement, "metropolitan" incorporation petitions do not trigger departmental analysis of this requirement, found in the last sentence in s. 66.016(1)(a), Stats. Section 66.015, Stats., separates incorporation petitions into two groups, "isolated" and "metropolitan," with distinct minimum area and

In summary, the Department finds that petitioners' boundary and the activities contained therein meets the statutory criteria for standard (1) (a).

SECTION 1 (b), TERRITORY BEYOND THE CORE

STANDARD TO BE APPLIED

"The territory beyond the most densely populated one-half square mile specified in s. 66.015 (1) or the most densely populated square mile specified in s. 66.015 (2) shall have an average of more than 30 housing units per quarter section or an assessed value, as defined in s. 66.021 (1) (a) for real estate tax purposes, more than 25% 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. 66.015 (3) or (4) shall have the potential for residential or other 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." (Wis. Stats. sec. 66.016(1) (b))

This standard imposes different tests depending upon whether or not the territory is intended to be incorporated either as an "isolated" or "metropolitan" city or village. The first part of this standard pertains only to "isolated" villages or cities, and permits one of two criteria to satisfy the standard: 30 housing units average per quarter section; or 25 percent or greater assessed value which is attributable to "existing or potential mercantile, manufacturing, or public utility uses." Neither of these criteria apply in the instant action, because petitioners have filed as a "metropolitan village."

Filing as a "metropolitan" village or city, as defined by the second sentence of (1) (b), requires the Department to find that territory lying beyond the most densely populated square mile shall have the potential for residential or other land use development on a substantial scale within three years, and authorizes the Department to waive those

population threshold requirements for each. In s. 66.016, Stats., "standards to be applied by the department," similar distinctions between "metropolitan" and "isolated" municipalities also obtain. Because Weston is a "metropolitan" incorporation petition, the "community center" requirement does not apply in this case.

areas where "water, terrain or geography prevents such development."

ANALYSIS

Filing as a "metropolitan village," petitioners in Exhibit 11, beginning on page 8, summarize through maps and narrative description, the basis for claiming that this standard is met. Supplemental information, submitted following the Department's public hearing, for the period 1990 to 1993, indicates that 224 building permits for residential construction within the boundary of the proposed village were granted by the town. Over half of these permits were located in the less developed sections of the proposed village (namely PLS Sections 14, 15, 16, 22, 23 and 24). During the same period, only 21 total permits were granted within the proposed town remnant (Section Building Permit Data, Town of Weston, see also Appendix 2 of the Department's Environmental Assessment for building permit statistics).

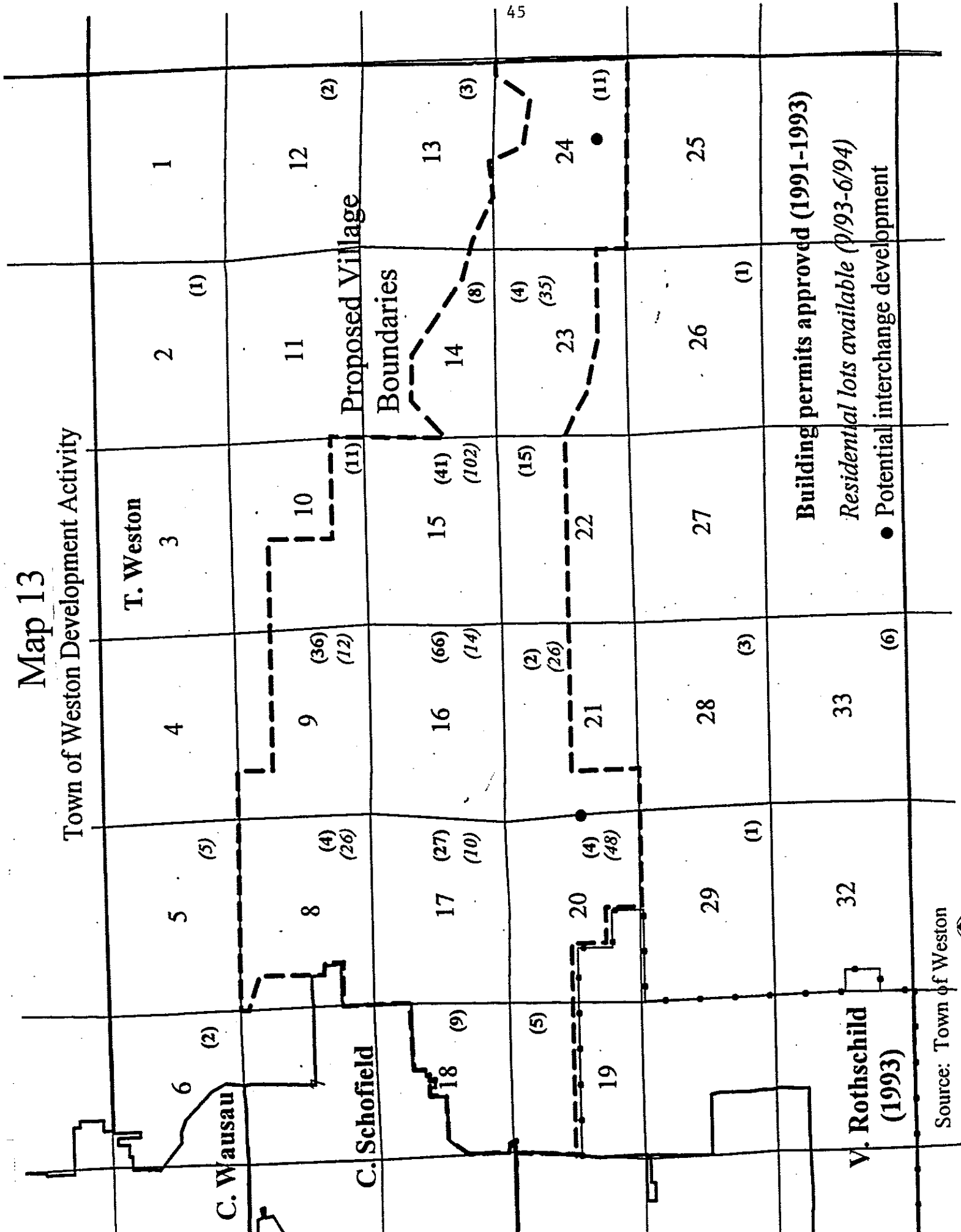
At the time of the December, 1993, public hearing, the town indicated that approved subdivision plats would have lots available for construction in 1994. These subdivisions are located outside of the developed "core" of the proposed village, in PLS Sections 9, 15, 16, and 20). When platting and installation of streets and public utilities are completed these subdivisions will provide 156 buildable lots (including 22 duplex sites) for purchase within the territory proposed for incorporation.

The town building inspector also noted at the time of the public hearing that seven preliminary plats were moving through the plat approval process. These subdivisions would provide an additional 125 buildable residential and commercial lots. No platting activity is currently ongoing in the town remnant (Building Permit Data, Supplemental Petitioner Information). The following Map 13, page 45, represents locations of new or proposed development within the proposed village and town remnant since 1991 (Town of Weston Building Permit Data, 1991-1993).

Map 14, page 46, the "Town of Weston, Marathon County, WI., 1990 Master Plan, illustrates unbuildable areas, as defined either by plan or ordinance (as lands reserved either as parks or wetland, floodplain, or shoreland). (Public Hearing Exhibit 11, unpagged) Map 15, page 47, prepared for the Department by the Marathon County Planning Department, depicts existing (using 1990 aerial photography) building outlines. This information, when considered together, illustrates that building activity is occurring almost virtually throughout the area proposed for incorporation.

Map 13

Town of Weston Development Activity



Source: Town of Weston

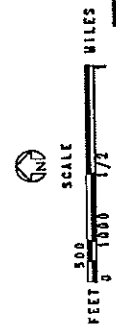
Scale: 1" = 3375 feet



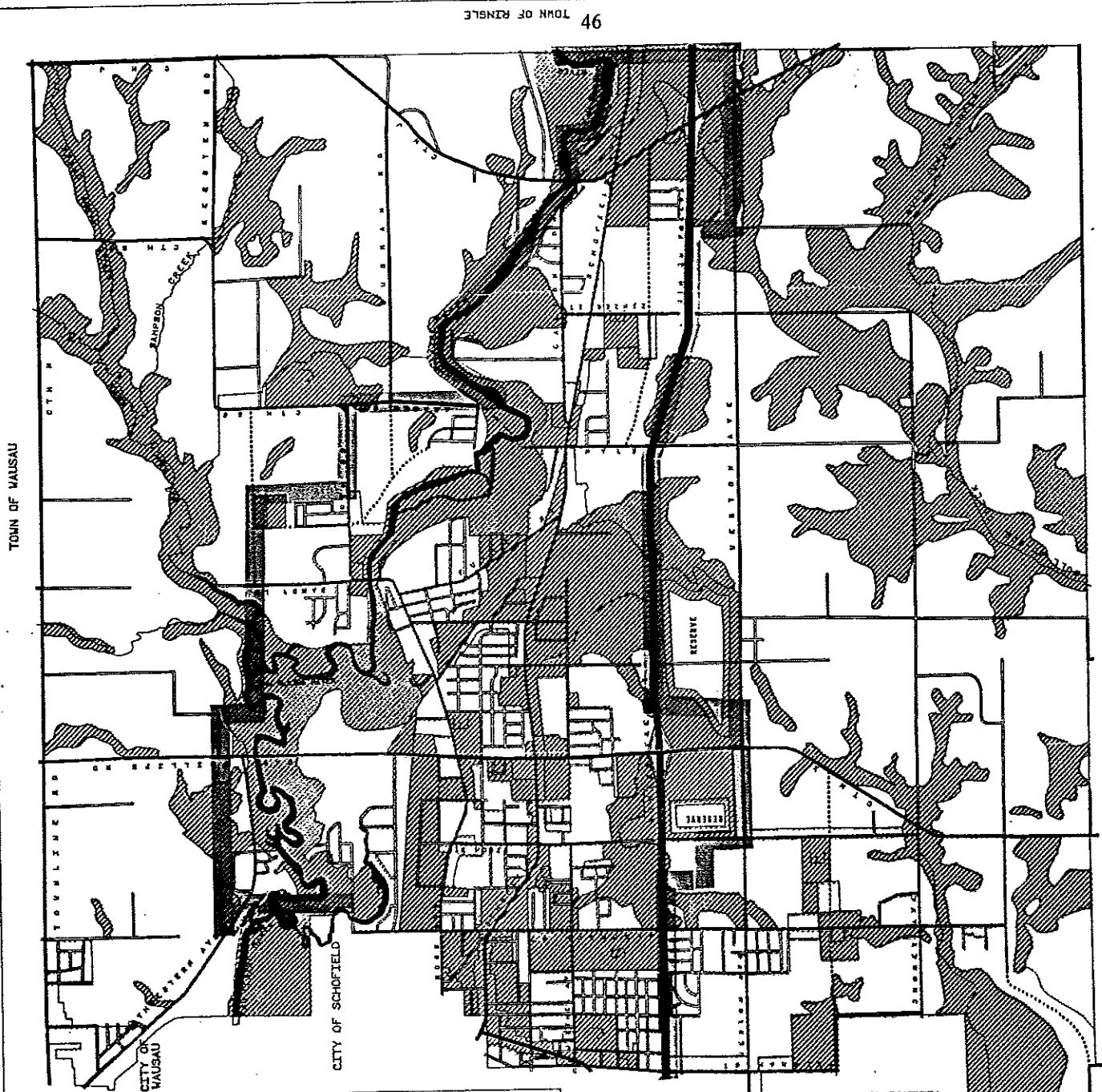
Map 14 TOWN OF WESTON MARATHON COUNTY, WI 1990 MASTER PLAN

- Rural Development
- Residential - Low Density
- Residential - Medium Density
- Residential - High Density
- Commercial
- Industrial
- Public
- Parks, Wetlands
- Streets**
- Collector (80' Base R/W Width)
- Minor Arterial (100' Base R/W Width)
- Major Arterial (200' Base R/W Width)
- Proposed Roadway
- Schools**
- Elementary
- Junior High
- Senior High

Prepared by: TOWN PLAN COMMISSION
 Assistance by: ANDERSON ASSOCIATES,
 Madison, WI
 RUSSELL KNETZGER, AICP,
 Milwaukee, WI
 NORTH CENTRAL WI REGIONAL
 PLANNING COMMISSION,
 Wausau, WI



Source: Public Hearing Exhibit 11

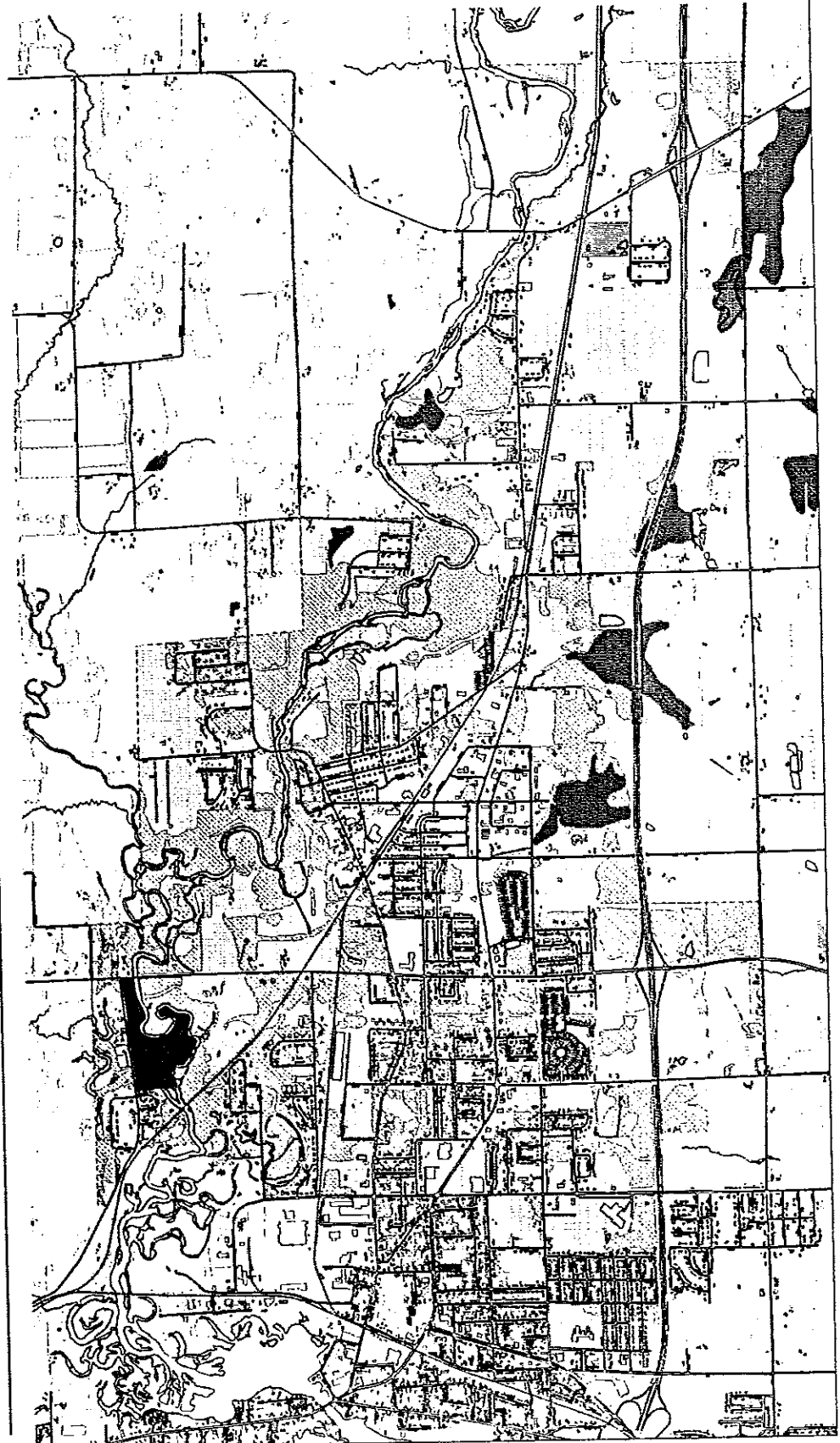


Map 15 PROPOSED INCORPORATION BOUNDARY FOR PART OF THE TOWN OF WESTON

- PROPOSED BOUNDARY AREA
- WATER FEATURES
- WOODS AREAS
- SWAMP AREAS
- PARK AREAS
- QUARRY AREAS
- BUILDING FOOTPRINTS
- ROAD EDGE
- RAILROADS



MAP DRAWING BY
HARRIS COUNTY GIS
AND PUBLIC PARTICIPATION



In addition to existing commercial activity noted previously under the heading *Retail and Commercial Activity*, pages 36 and 37, the town issued 19 building permits for commercial enterprises between 1991-1993. Development activity is either occurring or is under discussion for the two Hwy. 29 interchanges included within the proposed village. Along with mixed use residential and commercial development, the CTH X/STH 29 interchange is under consideration for a county branch library and office development. The CTH J/STH 29 interchange is the new site of a CAT heavy equipment dealer and is being considered for a truck stop/motel development ("Building Permit Data", Supplemental Petitioner Information). As mentioned previously under Transportation, Weston acquired the old C & NW trackage near the CTH J/STH 29 interchange to insure continued rail access in order to attract additional industrial clients to the area.

In addition to the land platting and building permit information previously described, petitioners also cite the annual increase in assessed value: 1990- \$20.27 million, 1991 - \$21.97 million, and 1992 - \$17.59 million. (Exhibit 11, page 11)

DETERMINATION

Without considering whether or not the tax increment districts proposed by petitioners come to fruition (Public Hearing Exhibit 11, page 8c), the land use plan, accompanying ordinances and other activities of the town strongly suggests that the proposed village would have the institutional capacity to develop these areas following incorporation. The TIF, if implemented, could enhance the ability of the proposed village to provide public sewer and water to the two areas previously mentioned as lacking in development activity. Therefore the immediate lack of current activity in these two areas is not a detriment. Accordingly, the Department finds that the "substantial development within 3 years" criterion is met.

SECTION 2 (a) TAX REVENUE

STANDARD TO BE APPLIED BY THE DEPARTMENT

"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." (Wis. Stats. sec. 66.016(2)(a))

ANALYSIS

Petitioner's Budget for Proposed Village and Remainder of the Town

The following Table 2, pages 50-52, describes a budget for the proposed village and remainder of the town prepared by Gary Marten, then Acting Town Administrator, and Mike Thompson, P.E., Director of Public Works. Along with "Supplemental Information" dated December 23, 1993, Table 2 describes the basis for dividing costs and revenues between the proposed village and the remainder of the town, based on the 1994 budget adopted by the existing town of Weston.

As stated in the town's narrative (Public Hearing Exhibit 11, "Data in Support of the Incorporation of a Village of Weston, (2)(a) Tax Revenue"), current functions of the existing town remain as budget items for the proposed village, but disappear as tasks for the remainder of the town due to the very rural nature and less complicated set of governmental issues. Table 3, page 54 provides a brief summary of population, assessed value and other differences between the prospective jurisdictions, and establishes the necessary basis for estimated changes in revenues and expenditures.

Due to the broad array of current town programs, population and size of budget, the existing town of Weston is unlike any other town in Marathon County. In terms of level of expenditure in support of a broad base of activities, it is more like the town of Madison in Dane County, or town of Grand Chute in Outagamie County, town of Pewaukee in Waukesha County, town of Menasha in Winnebago County, and the towns of Caledonia and Mt. Pleasant in Racine County. All of these towns currently provide "urban-type" services, due to populations and expenditure levels that are proportionate to the town of Weston. Despite the compatibility of services, several of these towns have double the number of persons residing in them compared to Weston. Although there are other Wisconsin towns with

Table 2

PROJECTED 1994 REVENUES
TOWN & VILLAGE OF WESTON

	WHOLE TOWN (adopted)	PROPOSED VILLAGE	TOWN REMNANT
PROPERTY TAX LEVY	\$1,164,045	\$1,164,817	\$24,262
MOBILE HOME TAX	95,000	95,000	-0-
TAX EQUIV. - WATER UTIL.	170,405	170,405	-0-
SHARED TAXES, STATE	1,442,732	1,317,350	125,402
FIRE PROTECTION AIDS	12,000	12,000	-0-
TRANSPORTATION AIDS	348,589	311,389	37,200
LIQUOR & BEER LICENSES	9,000	9,000	-0-
MOBILE HOME LICENSES	635	635	-0-
BARTENDER/CIGARETTE/AMUSE.	5,650	5,650	-0-
BUILDING PERMITS	30,000	25,000	5,000
UNCLASSIFIED FEES	6,000	5,500	500
COURT FINES	65,000	60,000	5,000
AMBULANCE FEES	45,000	43,000	2,000
SNOW REMOVAL	600	100	500
MISC. ASSESS LETTERS/OTHER	6,500	6,000	500
REIMBURSEMENT FROM UTIL.	40,000	40,000	-0-
EARNED INTEREST	23,000	20,000	3,000
RENTALS (HALL & EQUIP.)	3,500	3,500	-0-
POLICE DEPT. FEES	4,000	4,000	-0-
HOME OCCUPATION PERMITS	5,000	5,000	-0-
DEBT SERVICE	-0-	-0-	-0-
FRONTAGE ASSESSMENTS	10,000	10,000	-0-
DOG LICENSES	3,000	2,500	500
RECYCLING ASSESS. & BINS	257,000	21,165	41,697
SURPLUS, USE OF	330,000	330,000	-0-
TRANSFERS FROM REVERSE	35,000	35,000	-0-
RECYCLING/GRANTS	34,000	31,000	3,000
UTILITY TAX (ROTHSCHILD)	220,014	200,890	19,124
WATER UTILITY REPAYMENT	-0-	-0-	-0-
TOTALS	\$4,366,470	\$4,127,681	\$267,685

Table 2 (Continued)

PROPOSED 1994 EXPENSES
PRESENT TOWN, REMNANT TOWN, & PROPOSED VILLAGE OF WESTON

	PRESENT TOWN <u>(adopted)</u>	PROPOSED VILLAGE	TOWN REMNANT
GENERAL GOVERNMENT			
CHAIRMAN	\$3,600	\$3,600	\$2,670
SUPERVISORS	10,685	16,027	2,670
CLERK	25,617	25,617	5,300
ADMINISTRATOR	61,670	61,670	-0-
OFFICE ASSISTANTS	66,219	66,219	-0-
TREASURER ASSISTANT	2,200	2,200	-0-
MUNICIPAL AFFILIATE DUES	7,000	7,000	500
BOARD OF APPEALS	1,200	1,200	100
ELECTIONS	7,306	7,300	2,000
OFFICE SUPPLIES	14,000	14,000	500
OFFICE OUTLAY	10,000	10,000	500
PUBLICATIONS	12,500	12,500	2,000
ASSESSOR	28,000	25,500	2,500
BOARD OF REVIEW	500	500	100
AUDIT SERVICE	8,000	8,000	2,000
LEGAL FEES	45,000	20,000	2,000
PLANNING COMMISSION	2,050	2,050	720
REDRAFT ORDINANCES	<u>10,000</u>	<u>10,000</u>	<u>-0-</u>
TOTALS	\$315,547	\$293,383	\$23,560
NON-DEPARTMENTAL			
MUNICIPAL BUILDING	40,000	35,000	5,000
PROPERTY/LIABILITY INS.	77,500	77,500	20,000
WORKER'S COMPENSATION	60,000	60,000	-0-
UNEMPLOYMENT COMP.	10,000	10,000	-0-
MOBIL HOME TAX TO SCHOOL	53,000	53,000	-0-
INDUSTRIAL SIGN MAINT.	250	250	-0-
CONTINGENCY	20,000	18,000	2,000
FIRE HYDRANT RENTALS	255,000	255,000	-0-
WEATHER ALERT SIREN	200	200	-0-
BUILDING INSPECTOR	48,691	48,691	3,000
STREET LIGHTING	<u>50,000</u>	<u>45,000</u>	<u>5,000</u>
TOTALS	615,141	602,641	35,000
PUBLIC SAFETY			
EVEREST METRO POL DEPT.	842,965	800,800	42,165
FIRE DEPARTMENT	164,900	134,900	30,000
FIRE DEPT. OUTLAY	37,500	37,500	-0-
SAFETY BUILDING	32,200	32,200	-0-
SAFETY BLDG. OUTLAY	<u>500</u>	<u>500</u>	<u>-0-</u>
TOTALS	\$1,028,065	\$1,005,900	\$72,165

Table 2 (Continued)

PROPOSED 1994 EXPENSES (Continued)
PRESENT TOWN, REMNANT TOWN, & PROPOSED VILLAGE OF WESTON

	PRESENT TOWN <u>(adopted)</u>	PROPOSED VILLAGE	TOWN REMNANT
ROADS AND STREETS			
MACHINERY/EQUIP. MAINT.	\$100,100	\$90,100	\$10,000
OPERATIONS MANAGER	46,461	42,098	4,363
ENGINEERING	64,274	64,274	5,000
ENGINEERING TECHNICIAN	40,120	40,120	-0-
ROAD MAINT. (REFUSE)	1,078,285	960,688	117,597
ROAD OUTLAY:JELANEK AVE	300,000	300,000	-0-
EMPLOYEE BENEFITS	1,800	1,800	-0-
DEPRECIATION FUND	30,000	30,000	-0-
LANDFILL	56,000	56,000	-0-
SHOP MAINTENANCE	<u>5,000</u>	<u>5,000</u>	<u>-0-</u>
TOTALS	1,722,040	1,590,080	136,960
RECREATION			
SWIMMING POOL	-0-	-0-	-0-
ICE RINKS	8,705	8,705	-0-
PARKS	17,351	17,351	-0-
PARKS OUTLAY	43,800	43,800	-0-
EQUIPMENT OUTLAY	9,000	9,000	-0-
ADMIN. - RECREATION	68,820	68,820	-0-
DEPRECIATION FUND	<u>6,000</u>	<u>6,000</u>	<u>-0-</u>
TOTALS	153,676	153,676	-0-
DEBT SERVICE			
INTEREST 1991 PROJECTS	71,578	71,578	-0-
INTEREST 1988 PROJECTS	63,310	63,310	-0-
INTEREST - CONCORD AVE.	3,240	3,240	-0-
PRINCIPAL 1991 PROJECTS	190,000	190,000	-0-
PRIN. STORM SEWERS 1988	120,000	120,000	-0-
PRINCIPAL - CONCORD AVE.	33,333	33,333	-0-
PAYING AGENT FEES	<u>600</u>	<u>600</u>	<u>-0-</u>
TOTALS	\$482,001	\$482,001	\$-0-
GRAND TOTALS			
ALL DISBURSEMENTS	\$4,366,470	\$4,127,681	\$267,685

resident populations similar to the town of Weston, their level of expenditure is considerably less, reflecting more reliance upon county services, or services provided by their neighboring municipalities, or because certain services are not provided at all.

Chart 1 on page 55 illustrates the proposed administrative structure for the village of Weston, which duplicates the existing administrative structure of the town of Weston.

Changes occurring since the proposed budget was prepared, include borrowing approximately \$1.5 million to address landfill closure issues. That amount would presumably be added to existing debt service which is credited to the proposed village. Two other potential variables also need to be recognized. First, the potential impact from state shared revenue and transportation aids as formula factor amounts change in relation to maximum-minimum payment provisions. Secondly, it is not possible to ascertain what would happen to the operating budget of the proposed village should the remainder of the town choose not to rent administrative space, or purchase fire, police and highway maintenance services from the proposed village. If the remainder of the town decided not to participate, the proposed village may elect to cut back personnel and equipment used to provide these services, choose to absorb the cost and continue maintaining these services in their present form, or make a selected combination of some other services available to the remainder of the town or some other jurisdiction at a different level of service and cost.

As presented by the petitioners, state transportation and shared revenue payments account for approximately 41% of total revenue currently received by the town of Weston. The projected total of these payments as they are proposed to be divided drops to about 39.5% of the estimated budget for the proposed village, and is estimated to provide nearly 61% of revenue estimated to be needed in support of services for the remainder of the town.⁶

In the short run, local tax rates will significantly depend upon the level of transportation aids and state shared revenues that will flow principally to the remainder of the town, only to be redistributed to the proposed village using

⁶ For a detailed explanation of the operation of these formulas, see pages 62 through 86 of the Department's Environmental Assessment on the Proposed Incorporation of the Town of Weston.

Table 3

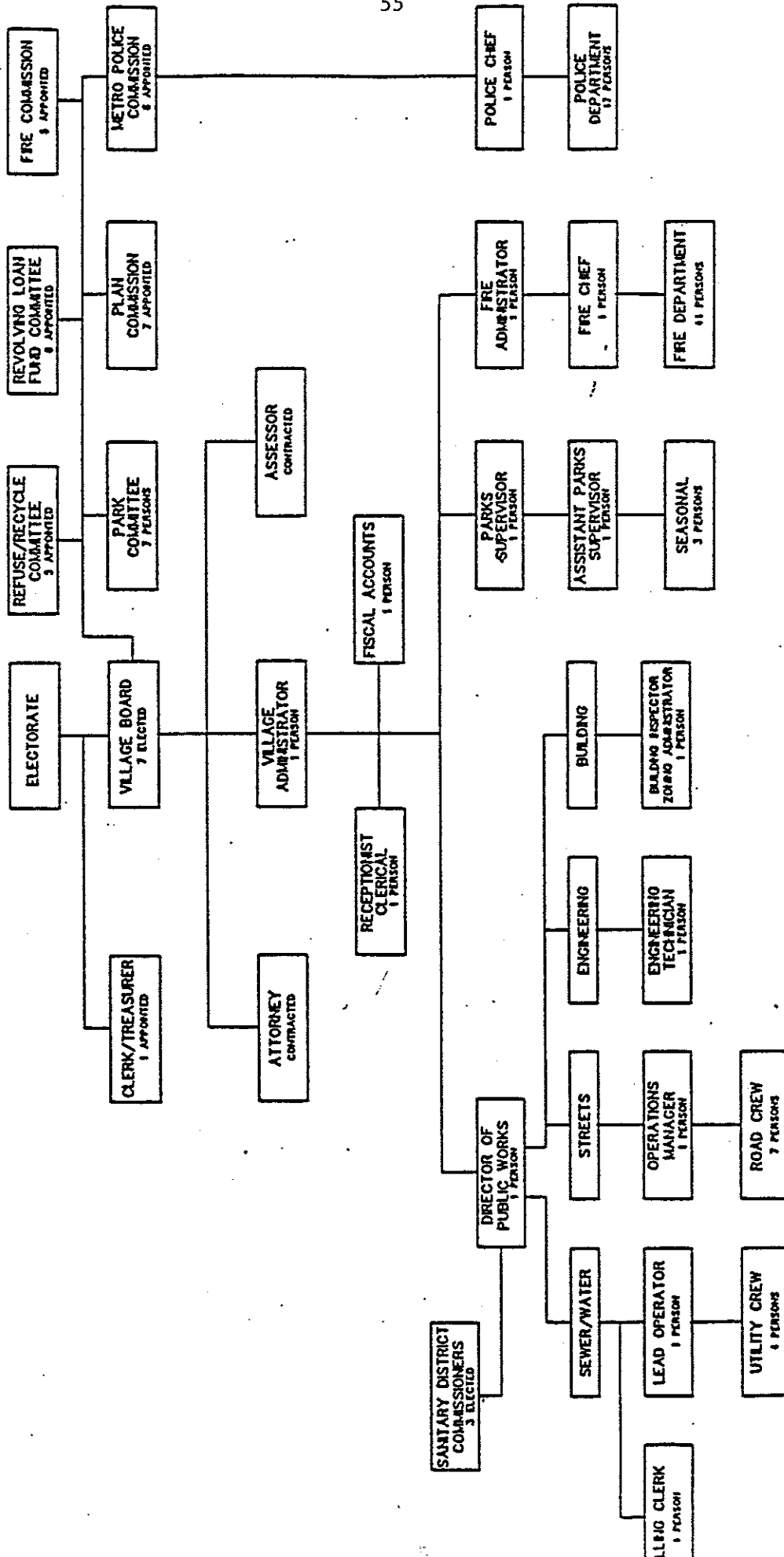
BASIC POPULATION AND FINANCIAL DATA*

	Proposed Village	Remainder of Town
Population (1993 Census projections)	9,639 (88%)	1,325 (12%)
Area in Square Miles (measured by the Dept.)	13.4 (45%)	16.2 (55%)
Assessed Value in Millions of Dollars	\$221 (91.3%)	\$21 (8.7%)
Miles of Local Roads	67.5 (68.5%)	31.0 (31.5%)

*As of 1993, data from town of Weston or gathered by the Department.

Chart 1

ORGANIZATIONAL STRUCTURE VILLAGE OF WESTON MARATHON COUNTY, WISCONSIN



an agreed upon s. 66.03, Stats., asset- and liability-sharing formula. At some point in time, say by year 3, aids will drop off to the remainder of the town because the lower level of spending by the town will begin to dominate aid calculations. Significant state transportation and shared revenue payments (other than for the per capita portion) will not begin to be paid to the proposed village until such time as the proposed village has developed its own record of spending and tax effort.

One way of assessing the sensitivity of both budgets to possible transportation and shared revenue fluctuations is to look at how the local property tax levy might be affected as aids change. For example, if \$500,000 of revenue (approximately one-half of the aidable revenue payment to the proposed village) was somehow reduced because of a lack of an expenditure history or because fewer dollars were received by the remainder of the town that would be available to be shared with the proposed village, and proposed village expenditures remained the same, the local property tax levy could rise. The tax rate based on the amount of local property tax levy found in Table 2 and the assessed value found in Table 3 would equal approximately \$5.30 per \$1,000 of assessed value. Increasing the local property tax by \$500,000 would cause the local property tax rate to rise to \$7.50 per \$1,000 of assessed value.⁷

But Public Hearing Exhibit 11, "Data in Support of the Incorporation of a Village of Weston, " page 11, indicates that assessed value has been rising by about \$20 million dollars annually. Taking a worst case scenario, even if shared aids available to the proposed village did actually decrease by as much as \$500,000 in years 2 or 3 or conversely, expenditures were to rise (as potentially indicated for example, should such expenditures as the amount of the landfill closing debt service continue to added to the budget), for every \$20 million increase in assessed value, the property tax would fall by \$.60 per \$1,000 of assessed value.

DETERMINATION

It is the Department's finding that should incorporation occur, that petitioners have realistically and adequately accounted for local purpose expenditures necessary to effectuate typical home-rule powers and, even allowing for

⁷ Approximately \$250,000 in new debt service - a 10-year note for \$1.5 million dollars borrowed to pay for landfill closing costs - has been incurred by the town since the filing of the incorporation petition, so that such a large amount of variation in either reduced revenue or increased expenditure is not implausible.

possible variation in local property tax rates as previously described by the Department, the range of potential property tax rates would continue to compare favorably with tax rates of similarly situated local governments. Therefore, the Department finds this standard to be met.

SECTION 2 (b) LEVEL OF SERVICES

STANDARD TO BE APPLIED

"The level of government 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(6)." (Section 66.016(2)(b)), Stats.)

ANALYSIS AND DETERMINATION

City of Schofield submitted a resolution to the Department requesting a moratorium on incorporation proceedings so as to enable the city to annex territory included with the incorporation petition (Exhibit 26, "Resolution, Incorporation of the town of Weston, City of Schofield"). The content of this resolution is not in accordance with the instruction found in s. 66.014(6), Stats., that states "Any municipality whose boundaries are contiguous to the territory may also file with the circuit court a certified copy of a resolution adopted by a two-thirds vote of the elected members of the governing body indicating a willingness to annex the territory designated in the incorporation petition." No such document consistent with this statutory section was filed with the Circuit Court and referred to the Department, therefore, this standard is not applicable.

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." (Section 66.016 (2)(c), Stats.)

ANALYSIS AND FINDINGS

This incorporation petition would divide the town of Weston into two separate parts. Information regarding prospective changes in population, land area, value and road mileage was previously presented in Table 3, page 54. Arguably the proposed remainder of the town of Weston is already well-defined as a distinct rural entity consisting of two parts, as a consequence of existing urbanization found between limited access highway STH "29" and the Eau Claire River, as well as by the adopted Land Use Plan and Weston Zoning Ordinance (see following Map 16, page 59), and the designated 208 Sewer Service Area boundary.

As the Department noted in Powers Lake (April, 1992), and which bears repeating here;

"Past determinations of the Department... have held that physical impact is minimal if the "territory contains no islands of town land and would not cut off or isolate any area of the town, nor would it prevent direct access by the town to any such area for road maintenance or other purposes."⁸ When some problems in providing services to remaining town lands are noted, past determinations have looked for mitigating factors. In Plover (1971), incorporation of a village would have removed about 45% of the town's tax base and resulted in a town whose shape "would roughly resemble a vertical horseshoe with a tall, narrow north-south arm on the eastern edge of the town and a shorter, much wider arm on the west," (p. 6). However, since access roads did exist to lands in the eastern arm and travel through village territory to provide services was possible, the effect on the shape of the remaining town was considered acceptable.

In Delavan Lake (1989), incorporation would have split the town of Delavan into two parts. The small part to the southwest consisted of wetlands and agricultural lands. The population of the town would have been reduced by about 50%; town land area would have been reduced by about 22%. Regardless of the results of incorporation on town shape, it was apparent from the determination that the petitioners and the town had already worked out detailed plans on mutual aid agreements, division of assets, and sharing of staff.

⁸ See Hewitt, 1972; Winter, 1973; Crivitz, 1974; Potter, 1980; Chain O'Lakes, 1982.

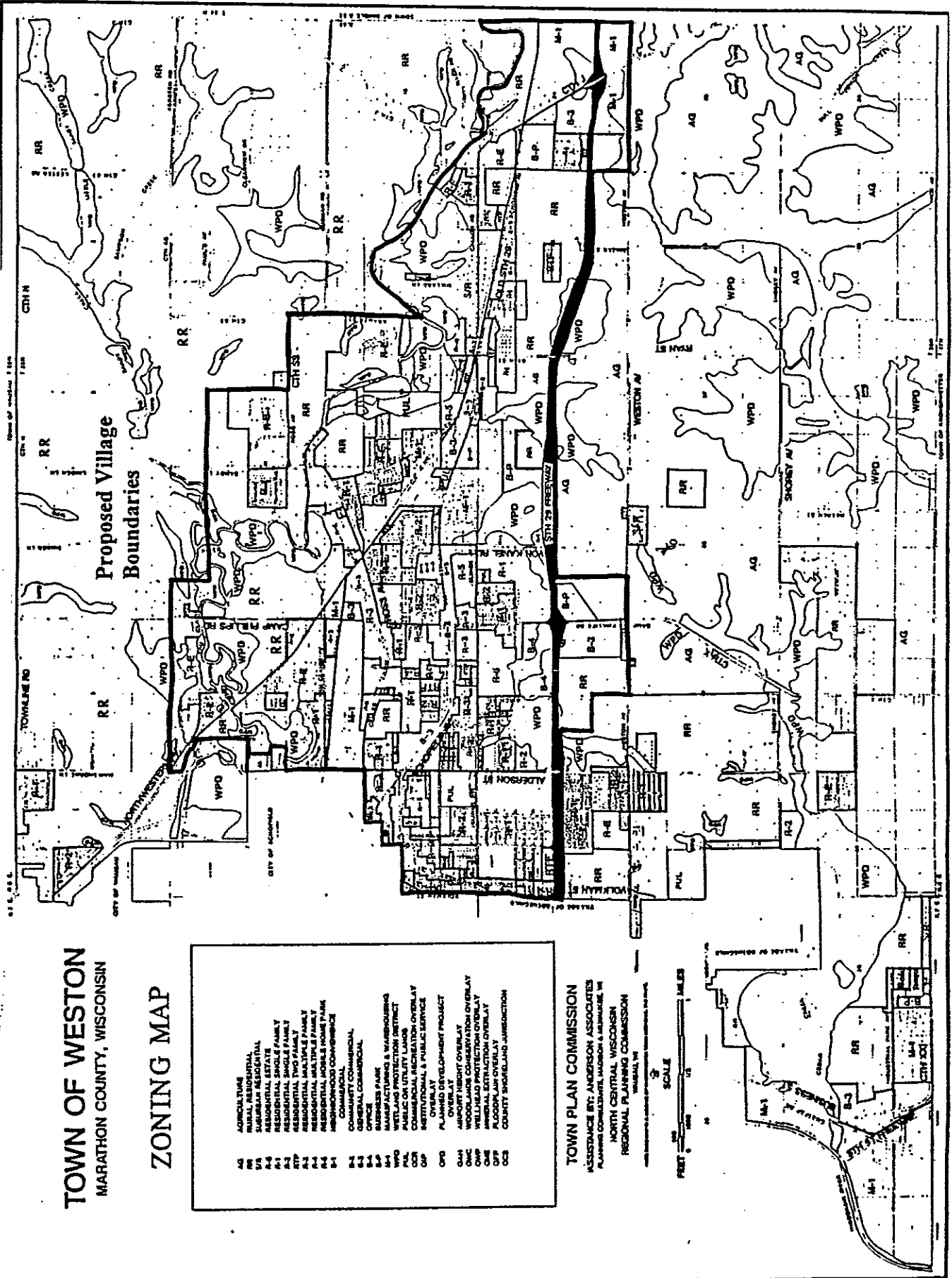
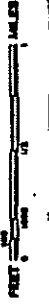
Map 16

TOWN OF WESTON MARATHON COUNTY, WISCONSIN

ZONING MAP

- AG AGRICULTURE
- RR RURAL RESIDENTIAL
- S/S SUBURBAN RESIDENTIAL
- RS RESIDENTIAL SINGLE FAMILY
- R-1 RESIDENTIAL SINGLE FAMILY
- R-2 RESIDENTIAL TWO FAMILY
- R-3 RESIDENTIAL MULTIPLE FAMILY
- R-4 RESIDENTIAL MULTIPLE FAMILY
- R-5 RESIDENTIAL MULTIPLE FAMILY
- R-6 RESIDENTIAL MULTIPLE FAMILY
- CC COMMERCIAL
- CC-1 COMMUNITY COMMERCIAL
- CC-2 COMMUNITY COMMERCIAL
- CC-3 COMMUNITY COMMERCIAL
- CC-4 COMMUNITY COMMERCIAL
- CC-5 COMMUNITY COMMERCIAL
- CC-6 COMMUNITY COMMERCIAL
- CC-7 COMMUNITY COMMERCIAL
- CC-8 COMMUNITY COMMERCIAL
- CC-9 COMMUNITY COMMERCIAL
- CC-10 COMMUNITY COMMERCIAL
- CC-11 COMMUNITY COMMERCIAL
- CC-12 COMMUNITY COMMERCIAL
- CC-13 COMMUNITY COMMERCIAL
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TOWN PLAN COMMISSION
ASSISTANCE BY: ANDERSON ASSOCIATES
PLANNING CONSULTANTS, MADISON & JANESVILLE, WI
NORTH CENTRAL WISCONSIN
REGIONAL PLANNING COMMISSION
JANESVILLE, WI



This cooperation and coordination of effort, in combination with other factors, convinced the Department that the proposed village could more likely serve the needs of the residents than the City of Delavan, which had filed a petition expressing a willingness to annex the territory. The Department also felt that the impacts on the remainder of the towns were not so significant as to prevent a finding that the criterion was met in this section of the statute.⁹ In general, problems with provision of services to remaining town lands were not considered so great as to merit dismissal on this point alone, but were considered in connection with the other standards of this section in arriving at a finding regarding this particular provision of the statute."

General principles to be inferred from the aforementioned determinations start from the premise that towns are the territory out of which cities and villages are created and expanded, and for that reason towns are, *per se*, not protected from incorporation or annexation. Generally speaking, it is commonly understood that following incorporation of a part of a town, the nature of town government would change, based on the types of issues, priorities and service needs deemed important by the remaining town residents. The purpose of this review is to ascertain whether there are any immediate or foreseeable long-range issues that would likely be beyond the ability to cope, either by the citizenry or a newly elected town board, or whether the configuration of the remaining town would by itself create insuperable problems.

Fiscal impact

Petitioners analyze the fiscal impact of incorporation on the remainder of the town, prepared as if the town were to purchase services from the proposed village, thereby implying a prospectively close relationship between the two governmental bodies (Exhibit 11). General expenditure categories, shown previously in column 3 of Table 2, pages 50-52, such as Public Safety, Non-departmental, Roads and Streets (public works), are therefore priced with this association in mind.

Comparison of the cost estimates found in column 3 of Table 2 with equivalent 1993 levels of expenditure for Marathon

⁹ However, the Department determined that Delavan Lake failed to meet the standard set in s. 66.016 (1)(a) and the petition was ultimately dismissed.

County towns¹⁰ having populations nearly similar in size to the proposed town remnant suggest the following: That estimated "general government" expenditures, even when including "Non-Departmental" expenditures, are perhaps low; while "Public Safety," including police, fire and emergency medical service, appear to be high; and "Roads and Streets" expenditures are in the middle of a broad range of expenditure, even when compared with towns having populations less than 1,000 persons.

Despite these comments, the budget for the remainder of the town appears to be realistic, and includes apparent savings should the remainder of the town elect to contract with the proposed village to continue to provide the higher level of basic services (police, fire, and emergency medical services) which town residents in the outlying areas of the town currently enjoy. Objects of expenditure not perceived to be needed, because of the rural nature of the remainder of the town, have been deleted by the petitioners.

If incorporation were to occur, the petitioners project a local property tax rate of \$1.20 per \$1,000 of assessed value. If the amount of shared revenue payments fluctuate as previously described in the fiscal analysis of the proposed village (*Ibid.*, pages 49-57), and if for example, the remainder of the town was reduced to relying on the basic \$1,350 per mile minimum state transportation aid payment, that amount times their estimated 31 miles of remaining town road would generate \$41,850, or roughly \$4,700 more than the amount projected by the petitioners.

The potentially greater problem for the remainder of the town would be a reduced shared revenue payment, due to no special utility payment after year 4 following incorporation (if incorporation were to occur in 1995), and a reduced aidable revenue payment after year 3 because the remainder of the town simply wasn't spending enough to generate a significant payment. If the remainder of the town had to make up for reduced aidable revenues in an amount of, say \$50,000, assuming other revenues and expenditures stayed the same, then \$50,000 divided by \$21,000,000 of assessed value would add \$2.40 to every \$1,000 of assessed value. Finding other revenues, or adding to the estimated tax base, or changing the amount of expenditures could alter this estimate. Even with this amount of potential variance, the tax rate seen by property owners in the remainder of the town would still likely be less than what they are currently paying, as pointed out by the petitioners.

¹⁰ Wisconsin Department of Revenue, County and Municipal Revenues and Expenditures, 1993 (Bulletin No. 93, February 1995).

Physical Impacts: Town Boundaries and Shape

Dividing the remainder of the town into two parts results in two separate areas that, because of their very rural nature, could be said to relate more to the towns adjoining the respective halves than to each other (town of Wausau to the north, and town of Kronnenwetter to the south). The northern border of the proposed remnant town of Weston is CTH N, which is shared along its length with the town of Wausau. Nevertheless, this northern area is still connected to the southern half by Northwestern Ave., Camp Phillips Road, CTH SS and J, and other streets. Connection to the southern half will be strengthened once Ryan and Kramer are connected by an additional bridge over the Eau Claire River.

Impacts on Land Uses

With the exception of medium density residential housing proposed by the existing Town Land Use Plan for the north 1/4 of the north 1/4 and northeast 1/4 of PLS Section 10, and an industrial/commercial reserve located in the southeast 1/4 of PLS Section 21, the two halves of the remainder of the town are entirely designated "rural development" by the Town Land Use Plan. With the exception of approximately 80 acres of the aforementioned "industrial/commercial" reserve, and the west 1/2 of PLS Section 29 and the northwest 1/4 of PLS Section 29, none of the remainder of the town lies within the existing town sanitary district and 208 Service Area boundary. Should incorporation occur, control of the existing town sanitary district would pass to the village, which would be responsible for continuing to provide for any service to residents residing within the district, but outside of the municipal limit line.

Agriculture

Agriculture is a major component of Marathon County's economic well being. The 1993 Agricultural Statistics rank it second in total acres (615,000) in agricultural production statewide. There are over 3,200 farms with an average size of 192 acres operating in the county. The county is a leading producer of barley, corn for silage, and hay. Marathon County is also one of 15 counties that produce an annual potato crop. The county is also a state leader in livestock commodities, ranking 3rd and 1st in cattle and calves and milk cows, respectively.

Many counties that are part of, or which include recognized metropolitan areas, have been subject to the conversion of

large amounts of viable farmland to a non-agricultural use (typical low density residential development). This has often been driven by the cost disparity between land sold for agricultural purposes or for development potential. In most cases (such as southeastern Wisconsin) the development value of agricultural land is much higher, often several times the justified agricultural value. However, in Marathon County, the inverse is true; agricultural land sells for more per acre on average than agricultural land diverted out of production (\$697 to \$466, Wisconsin Agricultural Statistics, 1993).

Focusing on Weston, urbanization of the Wausau metro area has already dramatically affected agricultural production in the town. In the town's latest Land Use Plan (1990, prepared by Town Plan Commission with technical assistance from Anderson Associates, Russell Knetzger, AICP, and North Central WI Regional Planning Commission), most territory outside the urbanized area of the town (and outside the proposed village boundaries) is classified as rural residential. Only sections 31-36 (southern part of town) and large parcels just south of Hwy. 29 are currently zoned for agriculture (Town of Weston Zoning Ordinance, see Map 16, page 60). While agricultural activity still exists in the northern section of the town, current zoning allows for limited rural residential development on parcels throughout the town that are not considered to be environmentally sensitive (zoning classifications are discussed in more detail in the "Proposed Incorporation of the Village of Weston Draft Environmental Assessment," under Town Zoning, beginning on page 34).

The Wisconsin Farmland Preservation Program, designed to help family farmers remain competitive in the face of rising property tax bills, is used extensively in Marathon County. However, the town of Weston has not adopted exclusive agricultural zoning, thereby entitling town farmers to the maximum credit. Farmers in the town of Weston who wish to participate in the program have the option to enter into individual agreements with the state Farmland Preservation Office (Personal comm., Farmland Preservation Program Staff, 1994). As of April of 1995, Wis. Admin. Rule draft ATCP 51 would eliminate the agreement portion of the Farmland Preservation Program.

The Land Conservation Department of Marathon County currently lists six agreements encompassing over 900 acres of farmland within the town of Weston (found within sections 1, 2, 21, 29 & 32). Because all land under a farmland preservation agreement lies outside the territory proposed

for incorporation, all agreements would be unaffected should incorporation occur. The agreements prevent conversion of the land involved to non agricultural uses except in extenuating circumstances (i.e. debilitating injury, etc.). For example, a property in southwest quarter of section 19 bounded by Hwy. 29, the Village of Rothschild as well as a single and multi-family subdivision, recently applied for and was granted a relinquishment of an agreement because "surrounding conditions prohibit agricultural use" (Marathon County Land Conservation Dept., 1994). However, 78% of the remaining 938 acres are locked into agreements until the year 2008 (Marathon County Land Conservation Dept., 1994).

Extraterritorial impact

Section 62.23(7a), Stats., "extraterritorial zoning," provides that municipalities adopting a zoning ordinance under section 62.23(7), Stats., may exercise extraterritorial zoning power as provided by this subsection. Villages may exercise extraterritorial authority extending up to 1.5 miles beyond the municipal limit line, subject to participation by the affected towns and extent of neighboring cities and villages and their related extraterritorial authorities, if any have been adopted.

Regarding the proposed village of Weston, extraterritorial jurisdiction within the remainder of the town of Weston could be limited by less than 1.5 miles in PLS Sections 5 and 6, and 28, 29, 32 and 33, should such ordinances be adopted by the village of Rothschild, and the cities of Schofield and Wausau. At this time, none of the aforementioned municipalities exercise extraterritorial zoning, but could exercise subdivision plat review authority and only city of Wausau has been active in this regard. Should incorporation of the village of Weston occur, the potential exercise of extraterritorial zoning and plat review authority by the city of Schofield over the town of Weston would be almost totally precluded. Should the proposed village of Weston adopt the appropriate ordinances, it could exercise extraterritorial jurisdiction over most of the remainder of the town, as well as parts of the unique double-wide PLS Sections 7, 18, 19, 30 and 31 of the town of Ringle.

Implementation of extraterritorial zoning can only proceed following adoption of a zoning ordinance affecting a municipality's own territory. It could be expected that petitioners would adopt the appropriate portion of the current town zoning ordinance, but have otherwise made no provision to do so. Following adoption of a resolution to

initiate extraterritorial zoning, a joint extraterritorial zoning commission is required to be established, comprised of equal membership from the incorporated municipality and any affected towns. Decisions of the commission require a favorable majority vote, and for that reason extraterritorial zoning commissions have experienced mixed effectiveness, and are not widely used.

What is more common is the exercise of extraterritorial plat review authority, under s. 236.21(2)(a), Stats., which is automatic unless waived by ordinance. But as with extraterritorial zoning, the city or village choosing to exercise this authority must first adopt a land division ordinance affecting its' own territory under s. 236.45, Stats. Petitioners have not explicitly stated they would adopt the town's land division ordinance, nor have they budgeted for its drafting and implementation. However, even if they chose not to, North Central Regional Planning Commission has developed model ordinances, including zoning and land division text, for consideration and adoption by towns, counties and municipalities in the region, which could serve as a point of beginning. But one other consideration is that in recent years, successive court decisions have severely limited the conditions which may be imposed on extraterritorial land division and plat approvals by the incorporated neighbors.

Activities described in the two preceding paragraphs could be said to constrain urban-type land development activities in unincorporated territory. A 3rd extraterritorial-type option exists which could provide for mutually agreed-upon urban-type development within a township, and that is the Boundary Change by Cooperative Plan and Agreement statute, s. 66.023, Stats. This statute permits agreements of unlimited duration regarding land uses, services and boundary changes, if any, in adjoining town territory, without restriction by duration or acreage, subject to approval by the Department according to statutory criteria. But, as in the previous two cases, before entering into such agreements, plans and ordinances regulating municipal territory must first be in place, and be capable of extension or replication to the territory under agreement. The present town of Weston is unusual in having a full suite of ordinances which could remain in force in the proposed remainder of the town if the appropriate enforcement mechanism is developed or agreed to by the new governing body of the remainder of the town. It is more likely than not that this situation could occur, because presumably all town residents had the opportunity to participate in the development and approval of the current ordinances, and are

used to having their affairs regulated by these ordinances. These circumstances are very different than those which could obtain if town residents were subject to new processes and procedures stemming from ordinances that were not of their making.

In summary, what this incorporation petition would separate from the remaining rural town of Weston is urbanized territory. Were the proposed village to exercise extraterritorial powers, they would largely (depending upon whether the powers affect zoning or platting) affect agricultural and natural resource-open space lands, and could slow the conversion of these lands to developed uses, which would be consistent with the intent of existing town of Weston ordinances. Any future town governing body could choose to continue to rely upon the portion of the town land use plan and implementing ordinances.

DETERMINATION

The foregoing analysis of territory (including location and shape), town services and operating budgets suggests that the remainder of the town of Weston would not be unduly disadvantaged by incorporation of the proposed village of Weston.

The proposed incorporation would remove control of the town sanitary district, and the principal responsibility for completing the remaining town land fill cleanup, from the remainder of the town. Yet the remainder of the town would retain the choice as to whether or not to continue to participate in the current structure of land use regulation and the various services now provided by the town.

Potential town tax rates reasonably believed to ensue should incorporation occur are not believed to be so onerous as to constitute a loss of scarce fiscal resources, or to create an undue burden for remaining town taxpayers.

For the previously stated reasons, petitioners meet the "impact on the remainder of the town" criterion.

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. There shall be an express finding that the proposed incorporation will not substantially hinder the solution of governmental problems affecting the metropolitan community." (Section 66.016(2)(d), Stats.)

ANALYSIS AND FINDINGS

The "metropolitan community" is defined in s. 66.013 (2) (c), Stats., to mean "the territory consisting of any city having a population of 25,000 or more, or any two incorporated municipalities whose boundaries are within 5 miles of each other whose populations aggregate 25,000, plus all the contiguous area which has a population density of 100 or more persons per square mile, or which the department has determined on the basis of population trends and other pertinent facts will have a minimum density of 100 persons per square mile within 3 years."

The metropolitan community for this determination consists of the cities of Schofield and Wausau, the village of Rothschild, and parts of the towns of Rib Mountain, Kronnenwetter, Wausau, Weston, Stettin, Maine, Texas and Ringle. Because of the barrier of the Wisconsin River, and the incorporated municipalities lying between the petitioners and the towns of Rib Mountain, Stettin, and Maine, these towns are not considered to be directly affected by petitioners, but could continue to be secondarily affected by services provided by the existing town of Weston/petitioners, and by petitioners continued participation in public affairs affecting the region as a whole.

Issues to be discussed under the "metropolitan impact standard" include a broad look at extraterritorial intergovernmental issues. This includes whether or not land use plans have been adopted either by the county or by neighboring jurisdictions which may suggest how the territory petitioned for incorporation would otherwise be developed and served; whether there is a basis for potential

conflict in the community visions encompassed by these plans; and the potential for annexation and extraterritorial impacts triggered either by the petitioners or by neighboring jurisdictions.

Although the city of Schofield, intervening in opposition to the proposed incorporation, did not file a "willingness to annex" petition, it nevertheless is claiming potential harm if this incorporation were to occur. This topic will be addressed in subsequent paragraphs as it relates to the metropolitan context. This section concludes with an analysis of how governmental and intergovernmental services within the region may be affected by the proposed incorporation.

Municipal Plans and Extraterritorial Issues

In past "metropolitan" determinations (for example, Grand Chute (1985), Allouez (1985) and Pewaukee (1991)), adopted comprehensive plans indicating the territorial land use and public service programs and goals of adjoining municipalities were taken into account by the Department in arriving at its conclusions. By analyzing and weighing the consequential impacts of the proposed incorporation on adopted municipal plans and ordinances, and where appropriate, county plans and ordinances, the Department recognized the existing incorporated status of those municipal neighbors who could potentially be affected by the proposed incorporation, as well as the potential for issues to affect the larger community as a whole.

The city of Wausau's latest development plan, as well as their public hearing testimony, envisions continued growth to the west into town of Stettin (which lies to the north of the town of Weston), as well as north into the towns of Maine and Texas.¹¹

Turning briefly to city of Schofield, the subject of further discussion in later paragraphs, other than annexing land for the Schofield industrial park, the border between Schofield

¹¹ See Map 1 of "Major Amendment to the Wausau Sewer Service Area Boundary, November, 1992," adopted by the Wausau Common Council, December, 1992, and approved by the Wis. DNR, June 21, 1993. While Wausau anticipates some continued growth to the southeast (one sewer service area boundary amendment includes the territory comprising Wausau's recent Greenwood Annexation from the town of Weston), the separation provided by the Sugar Creek watershed will likely preclude the city from crossing it in order to supply urban services to central Weston. Indeed, the Sugar Creek watershed boundary largely provided the physical basis for the intergovernmental agreement between the city of Wausau and the town of Weston.

and Weston has remained stable for decades (as was earlier noted under the heading "Previous Political Boundaries"). City of Schofield has not adopted policy instruments that indicate the means and vision by which it would assert its system of municipal governance over the territory petitioned for incorporation.

Since annexing several square miles of territory from Weston in 1992 and 1993, including a rapidly developing mall, motel and retail service center, village of Rothschild has been focusing its primary attention to annexation and service issues regarding a developed urban area that lies on the village's southern border in the town of Kronenwetter. Village of Rothschild has adopted zoning, but lacks a land use or comprehensive plan, or the ordinances by which it could extend, as in the aforementioned case of Schofield, its regulatory system over the territory petitioned for incorporation.

As described in the preceding section, "Impact on the Remainder of the Town," extraterritorial impacts (stemming from either plat review and/or zoning) besides potentially affecting the remainder of the town of Weston, could also affect the town of Wausau (in parts of PLS Sections 31-35), and Ringle (parts of extended PLS Sections 18, 19, 30 and 31). This impact could occur because town of Weston, through existing plans and ordinances, has already established the basis for regulation, should the proposed village adopt the same plans and ordinances as its own, along with the required ordinances permitting it to exercise platting and/or zoning authority 1.5 miles beyond its municipal limit line.¹²

Prior to filing the incorporation petition, petitioners from town of Weston negotiated boundary agreements with the village of Rothschild and city of Wausau (Exhibits 12 and 29). As previously discussed under the heading "Previous Political Boundaries" both municipalities either recently annexed, or were about to annex, territory from the town of Weston. In both cases, the annexations were thought to represent, at least for the foreseeable future, a more or less permanent demarcation between these two incorporated municipalities and the town of Weston. Referring to Map 8, page 24, Wausau's "Greenwood Annexation" stops approximately at the south line of PLS Section 5, where as the "Cedar

¹² Marathon County relies on town zoning, a 1980's farmland preservation plan that has not been amended, and has not adopted a county-wide land use plan or county development plan. Therefore, individual towns, cities and villages are left entirely to their own initiative regarding how to plan for and regulate the use of land within their borders.

Creek (Benaszeski/Marcell)" and "Solum" annexations to Rothschild stop, with a few exceptions, at the east line of PLS Sections 19, 30 and 31.

Notwithstanding the aforementioned intergovernmental agreements, additional potential growth areas for both municipalities (as well as for the proposed village of Weston) exist within the territory of the proposed remainder of the town of Weston. For city of Wausau, this territory consists of the first tier of PLS sections extending east from the "Greenwood Annexation", and lying north of the Eau Claire River and Big Sandy Creek, which form a logical limit for the extension of public services from the city of Wausau. City of Wausau testified during the Department's legislative hearing that the "Greenwood Annexation" represents the southerly extent of city annexation intentions, based on existing adopted land use and facility plans (Tape 8, Weston Public Hearing). For village of Rothschild, potential territory for annexation remains within the town of Weston - south of STH 29, nominally the southern boundary of the proposed village. Village of Rothschild has recently more than doubled in land area, and is presently annexing southward along the STH 51 corridor, past the developing Cedar Creek Mall into the town of Kronnenwetter. This is a more logical growth corridor because of pre-existing residential development, including an elementary school. Annexation by the proposed village could also occur following incorporation in areas immediately adjacent to the proposed northerly boundary of the village, should market demand continue to expand for residential development now occurring in this area.

Despite annexation by Rothschild of large areas of the existing town of Weston Sanitary District, the present town of Weston continues to control the sanitary district because a majority of the district's population lives in the town of Weston/territory proposed for incorporation. Should incorporation occur, the sanitary district would be dissolved and operation continued as provided by s. 60.79, Stats.

In addition to extraterritorial regulation by the proposed village of Weston, annexation by the proposed village along the STH 29 corridor into the town of Ringle is also possible, should incorporation occur, if the proposed village stimulates economic growth by successfully establishing a tax increment finance district and providing full public services to the CTH J and STH 29 interchange. Town of Ringle is zoned, but has no land use plan

Affect of possible incorporation upon the city of Schofield
City of Schofield, contiguous to petitioner's western boundary, intervened in opposition to the incorporation. As illustrated by Map 8, page 24, incorporation of the proposed village would preclude future city expansion by annexation with the exception of the northeast one-quarter of PLS Section 7, town of Weston.

Should incorporation occur, further annexations by city of Schofield would be nearly precluded. However, should the affected local units of government concur, shared boundaries could be modified using either ss. 66.022, 66.023, or s. 66.30, Stats. (boundary change by detachment, by cooperative plan and agreement, or by intergovernmental agreement). There is also the possibility of consolidating the city with the proposed village, or with village of Rothschild or city of Wausau using s. 66.02, Stats. In this scenario, two or more municipalities could consolidate through successful referenda in each community, without any other agency involvement, including that of the Department. These statutory options are also available for use by any of the other contiguous incorporated and unincorporated units of government in the Wausau area.

For many years (30 - "Petitioners' Brief in Support of Incorporation," page 13), apart from an annexation for the Schofield industrial park, the boundary between Schofield and Weston remained stable. In September, 1992, Mr. Richard Hintze published a notice of intent to annex approximately 6.4 square miles of the urbanized part of the town of Weston. Pursuant to the Department's annexation review authority, s. 66.021 (11), Stats., this Department advised city of Schofield that the proposed annexation was "against the public interest" because, among other reasons, it omitted the recently closed town landfill (ignoring financial liability and outstanding legal issues), and urbanizing areas lying outside of the Hintze petition in need of urban services then provided by the town of Weston, thereby creating a potential hardship for remaining town residents.

The Department also advised that in the experience of staff, the annexation statute was never intended to be used "in this manner." That statutes governing municipal incorporation, consolidation, and annexation by cooperative plan and agreement "...each provide sufficient time and a more deliberative method by which the local governing bodies, the property owners and electors residing in the territory encompassed by the communities, subject to review by the state, can better determine where boundary lines

should be drawn, and which governmental units(s) might best control the territory." (DOA annexation reference number 8436, dated 10/26/92). The Hintze annexation petition failed to receive the required number of valid signatures. It is generally acknowledged that the filing of this petition precipitated the decision of petitioners to initiate this incorporation effort in order to protect the integrity of existing public works and safety services and regulatory structure.

The Hintze annexation petition is related to this incorporation petition because the assertion of harm alleged to befall Schofield if they are not allowed to continue to annex into Weston is based in large measure upon exhibits analyzing and explaining why Schofield should have proceeded with the Hintze annexation, which is an altogether different question from whether or not incorporation of the urbanized area of Weston should occur, or whether city of Schofield is capable of annexing and serving the territory petitioned for incorporation.

During the pendency of the Hintze petition, city of Schofield engaged the Wisconsin Taxpayers Alliance (WTA) to advise whether or not the annexation should be accepted. WTA performed a traditional local government per capita fiscal analysis utilizing revenues and expenditures, as well as an analysis of state aid formula impacts, based on conditions as they existed at the time. Certain activities that were about to occur, such as the positive impact stemming from the retirement of the village's TIF debt, were not recognized by the WTA analysis. The WTA advised against accepting the petition, largely because of the negative short-term revenue impact stemming from operation of state aid formulas.

City of Schofield asked its accounting firm for a second opinion. The firm advised the city to accept the petition, based on a projection of existing trends (an excerpt from this report was included as part of the intervenor's "Brief on Opposition"), the positive information not considered by the WTA, and the asserted potential for legislative reinterpretation or potential amendments affecting the application and operation of state shared aid formulas. Counsel for the city of Schofield attached the AT analysis (for the Hintze annexation petition) to his Brief, requesting the Department to consider it.

Through Exhibits 26 and 27, briefs in opposition to incorporation, and the intervenor's various responses to the draft environmental assessment, Schofield contends that

incorporation will send the city into a downward fiscal spiral, leading to its ghettoization. But Schofield has not in fact pointed out any specific good, such as how the operation of existing departments would benefit from the Hintze annexation, or how existing infrastructure or public works, and safety issues could operate more efficiently, or for the context of this section, benefit the metropolitan area were this incorporation petition to be denied. Schofield's own consultants do not agree as to whether Schofield has the ability to regulate and serve, with its existing governmental systems, a population and land area approximately 3-4 times larger than the existing city of Schofield. The planner states that governmental operating systems would have to change (response to the environmental assessment, page 4); the accounting firm says no.

The question which should be asked is whether the level of services, quality of planning, and existing ordinances of the city of Schofield could apply to territory of the town of Weston, and conversely, are these systems - which arguably could be said to tangentially affect the metropolitan area - likely to be adversely affected if incorporation occurs? Schofield made little effort to directly engage the service issues raised by petitioners, nor did Schofield adequately characterize their own operating systems and the types of operating system needs that could potentially be met through economies of scale brought about by annexation, in order to substantiate their assertion of harm.

Pewaukee (1992) provides an example of a successful assertion by an incorporated municipality, the city of Waukesha, of an ability to serve territory petitioned for incorporation, documented by facility plans, a pattern of capital investments, and land use ordinances. Instead, Schofield told the Department during the public hearing that by being land locked, Schofield would become like Detroit and St. Louis.

Through hearing testimony and successive exhibits, the Department was given no fewer than 4 variations of the reason why Schofield failed to file a "willingness to annex" petition with the circuit court as permitted by s. 66.014(6), Stats. Had Schofield filed this petition, an analysis and comparison of Schofield's administrative, public works, public safety and code of ordinances with those of town of Weston would have ensued.

At the beginning of the incorporation process, the Department described its information needs and invited

submission of materials characterizing local government operations. No evidence was provided to the Department illustrating the nature of Schofield's long range vision. Instead, during the Department's hearing and through information provided or gathered by the Department, the adequacy of Schofield's emergency medical service, confusion over the amount Schofield would have to contribute to the total cost of reconstruction of its segment of STH Business 51, and other matters came to light. Analysis within the incorporation record provided to the Department on behalf of Schofield does not address the changing nature or level of Schofield's existing public services, their adequacy, or the basis for their current and potential future costs or their level of service standard.

Schofield claims otherwise (letter from the accountants to the Department dated May 23, 1995). Yet because the population then present in the Hintze petition grossly outnumbered the population residing in the city of Schofield, it is entirely possible, and indeed likely, that the elected government of Schofield as well as the level and number of services desired by a majority of residents would themselves change as a result of annexation.

In Exhibit 26 ¹³, 5th paragraph, alludes to "...alternatives to such a large annexation...", and in paragraph 4 to "...with any growth and increase of population the City recognizes the necessity for upgrade of its services from present levels...." These statements are not consistent with the "Resolution" dated May 16, 1995, submitted to the Department in response to the Draft Environmental Assessment, whereby the city claims the only reason the Hintze annexation was not approved was "...because there were less than 51% of the property owners by area or assessed value signing the petition, and for no other reason...." This later statement comports with the comment in "Petitioners' Reply Brief", page 14, "...that Weston attempted to put consolidation on the discussion table on several occasions and each time was rebuffed by Schofield."

Although variability, over time, of state aids and changes in equalized value under different economic conditions are addressed in the April 30, 1993, report appended to the "Rebuttal Brief of Intervenor City of Schofield," the service needs and existing or potential economic structure of the combined territory, and the nature of the ordinances,

¹³ "Resolution, Incorporation of the Town of Weston, City of Schofield"), wherein "...the city proposes a moratorium on the incorporation process so as to pursue negotiations in earnest with the Town of Weston."

plans, other instruments, and staff necessary to service, protect and regulate a larger entity are not discussed. The implicit assumption is that the existing ordinances, plans and services of Schofield would substitute for the existing higher levels of service currently enjoyed by the annexed territory, while the increasing assessed values of the annexed portion of the town would make annexation worthwhile.¹⁴ In summary, consultants to the city of Schofield appear to be recommending annexation of tax base for purely reasons of cash flow, without fully considering whether or not the tastes and preferences for public services of a population over 3 times the size of Schofield would likely cause the type and level of services currently provided by Schofield to change.

Without preliminary definition of types, levels and costs of services to be provided or duplications of service eliminated, any quantitative projection of future benefit from annexation simply based on projected changes in state aids is unrealistic.¹⁵

Metropolitan issues

If anything, the Weston incorporation is unique from the aspect that here exists an urban town, one of a handful in the state of Wisconsin, which provides full urban services to its residents, services which are in excess in quantity and quality of those of some of its incorporated neighbors. And some services or activities initiated but now managed by someone else as enumerated below, extend well beyond the boundary of the town of Weston. In such circumstances, what are the rights of existing incorporated neighbors?

¹⁴ See paragraph number 4 on un-paginated page 4, and "Summary" on un-paginated page 6 of the attachment to "Rebuttal Brief of Intervenor City of Schofield".

¹⁵ On page 4 of a letter to the Department dated May 23, 1995, commenting upon the Draft Environmental Assessment, the accountants cite their April 22, 1993 report to the city of Schofield, and state they developed a combined budget for the city and the petitioned Hintze annexation, in order to "determine how to provide service to the new City." This report was apparently excerpted in an attachment to a December 22, 1993, letter referencing supplemental materials for the incorporation hearing record submitted by counsel for city of Schofield, but the full report was not made part of the record by city of Schofield. Notwithstanding this omission, it would be difficult to prepare a prospective budget for serving the Hintze petition which could be said to represent the tastes and preferences of the population of the territory - which vastly outnumber that of Schofield by at least a ratio of 3:1, unless city of Schofield department heads collaborated with elected Weston officials, as well as the town administrator, public works director, engineer, fire and police chiefs and other employees. There seems to be a fundamental misunderstanding by Schofield's consultants as to whether s. 66.021, Stats., is the appropriate tool by which to promote the merging of separate units of government.

As discussed at the outset of this Determination, statutes and case law provide the Department with discretion as to how standards s. 66.016 (2) (a-d), Stats., are interpreted. Section 66.016 (2) (d), Stats., relates to issues affecting the metropolitan community, and not necessarily those issues that just affect the petitioner and one other municipality. In past determinations, the Department has considered boundary and related service issues within the larger context implied by the word "metropolitan." Issues such as the delineation of "208" sewer service area boundaries designating territory to be served by public sanitary sewer, and metropolitan planning organization, transportation planning and project delineation and enumeration, while they may just affect a town or city and village, have the capability if conflict is not resolved, of affecting more than just those two jurisdictions. This rationale explains why boundaries and service issues were also discussed under the "metropolitan impact" standard in Pewaukee (1991).

In the present case, Schofield did not file a s. 66.014 (6), Stats., resolution. This resolution would have triggered an analysis of administrative, public works, safety and other services performed by the city of Schofield, along with a comparison between the government structure and services with the structure and services proposed to be provided by the petitioners.

At the outset of the incorporation process, city of Schofield and petitioners were told by the Department that failure to meet any one of the incorporation standards would cause the Department to recommend that the incorporation petition be rejected. City of Schofield can not now assert what they chose not to file. The services of Schofield are not now an issue but for the fact that Schofield maintains, within the "metropolitan impact" section, that its continued ability to annex into Weston is necessary for the health of Schofield without saying how such annexation and any consequences for town of Weston services would affect or benefit the metropolitan community. The narrative in "Brief of Intervenor City of Schofield in Opposition to Petition," pages 6-8, when read in its entirety, raises no "metropolitan problem," and instead substitutes the parochial issues pertaining to city of Schofield - issues which more properly should have been raised under s. 66.016(2) (b), Stats.

Testimony received by the Department at the public hearing, from the North Central Regional Planning Commission Director, Mayor and City Attorney from the city of Wausau, and from the Marathon County Executive appearing on his own

behalf, were either neutral or supportive of the incorporation, largely because of the contributions to regional quality of life made by the town of Weston, and the presumption that such contributions will continue in the future. Representatives from city of Schofield testified in opposition to the incorporation. Beyond the issue of whether or not Schofield would ineluctably become a ghetto, the other thrust of Schofield's argument asserts that they should be free to annex into Weston, pursuant to s. 66.021, Stats., without providing the Department or the court with any indication as to which intergovernmental systems they would abolish, which they would maintain, or further enhance presumably for the benefit of the metropolitan community.

In Exhibit 11, beginning on page 23, petitioners raise 7 "metropolitan" issues in support of incorporation. In brief, these issues raised by petitioners include (1) controlling urban sprawl, (2) maintaining safe water supplies, (3) expanding the job and tax base, (4) preserving community identity and popular control, (5) Maintaining fiscal equity in raising public revenue, (6) enhancing administrative effectiveness in the delivery of public services, (7) improving economic efficiency in public service production.

Through its adopted plans and ordinances (previously cited herein), and history of participation in intergovernmental activities, town of Weston asserts that it has positively affected intergovernmental affairs in the Wausau region, and addressed the "metropolitan" issues identified in the preceding paragraph.¹⁶ "Petitioners' Reply Brief", pages 13 and 14, cites the following examples:

1. Weston spearheaded and cooperated with Rib Mountain, Kronenwetter and Rothschild in organizing the Rib Mountain Sanitary District.
2. Weston chaired the 911 County Committee to get the 911 system adopted countywide. Weston merged its own dispatch center with the county in order to provide a smooth transition in the countywide 911 system. This was completed in 1991.
3. Weston has been instrumental in cooperating with other communities in central Wisconsin in drug

¹⁶ Town of Weston is one of the few municipalities in Marathon County to have a modern zoning ordinance, based on an adopted land use plan. With the exception of town of Rib Mountain and city of Wausau, other jurisdictions, including Marathon County itself, lack current land use plans, or have antiquated zoning ordinances not based on any planning.

enforcement operations (Northern Wisconsin Drug Enforcement Group - NORDEG).

4. Weston has been a leader and has cooperated with the cities of Wausau and Schofield, the Village of Rothschild and the Towns of Kronenwetter, Rib Mountain, Stettin, Texas and Wausau in highway planning through the metropolitan planning organization.

5. Weston has cooperated and worked with Marathon County in planning a new branch library facility in Weston to serve Weston, Rothschild and Schofield.

6. Weston has worked with the towns of Easton and Ringle in providing emergency medical services.

7. It was at Weston's continued urgings that the City of Schofield and the Weston Police Department merged along with the municipal court system.

8. Weston conceived the idea, wrote the grant and formed the Marathon County Crimestoppers.

This summary of institution building and intergovernmental cooperation on the part of the town of Weston is unusual to say the least, when considering the history of the application of the "metropolitan" incorporation standard to specific incorporation petitions. Town of Weston has assumed leadership in resolving selected regional problems in a manner normally associated with incorporated municipalities.

DETERMINATION

After considering the potential impact of incorporation on neighboring towns, cities and villages, and reviewing the briefs, exhibits and hearing tapes, and particularly considering the concerns raised by the city of Schofield, the Department determines that the potential impact of incorporation has already been dealt with in part by two intergovernmental agreements, and for the remaining municipalities may well produce a positive effect.

The Department does not agree with the future course of events predicted by Schofield, nor does the Department agree that permitting Schofield to annex into the territory petitioned for incorporation would serve to resolve metropolitan issues (which is the opposite, based on the evidence, of what the Department determined, for example, in Grand Chute (1985) and Pewaukee (1992)). Therefore the

Department determines that petitioners have met this standard.

SUMMARY OF THE ANALYSIS OF THE STANDARDS

Standard 1(a), Homogeneity and Compactness - Met

Standard 1(b), Territory Beyond the Core - Met

Standard 2(a), Tax Revenue - Met

Standard 2(b), Level of Services - Not Applicable

Standard 2(c), Impact on the Remainder of the Town - Met

Standard 2(d), Impact on the Metropolitan Community - Met

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

THE PETITION AS SUBMITTED SHALL BE GRANTED

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), Stats., 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 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 rehearing. The petition for rehearing should be filed with the Department of Administration. 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 Administration 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 Administration as respondent.

This notice is part of the decision and incorporated therein.

Secs. 227.49 and 227.53, Stats. are hereby reproduced in their entirety

227.49 Petitions for rehearing in contested cases. (1) A petition for rehearing shall not be a prerequisite for appeal or review. Any person aggrieved by a final order may, within 20 days after service of the order, file a written petition for rehearing which shall specify in detail the grounds for the relief sought and supporting authorities. An agency may order a rehearing on its own motion within 20 days after service of a final order. This subsection does not apply to s. 17.025 (3) (e). No agency is required to conduct more than one rehearing based on a petition for rehearing filed under this subsection in any contested case.

(2) The filing of a petition for rehearing shall not suspend or delay the effective date of the order, and the order shall take effect on the date fixed by the agency and shall continue in effect unless the petition is granted or until the order is superseded, modified, or set aside as provided by law.

(3) Rehearing will be granted only on the basis of:

(a) Some material error of law.

(b) Some material error of fact.

(c) The discovery of new evidence sufficiently strong to reverse or modify the order, and which could not have been previously discovered by due diligence.

(4) Copies of petitions for rehearing shall be served on all parties of record. Parties may file replies to the petition.

(5) The agency may order a rehearing or enter an order with reference to the petition without a hearing, and shall dispose of the petition within 30 days after it is filed. If the agency does not enter an order disposing of the petition within the 30-day period, the petition shall be deemed to have been denied as of the expiration of the 30-day period.

(6) Upon granting a rehearing, the agency shall set the matter for further proceedings as soon as practicable. Proceedings upon rehearing shall conform as nearly as possible to the proceedings in an original hearing except as the agency may otherwise direct. If in the agency's judgment, after such rehearing it appears that the original decision, order or determination is in any respect unlawful or unreasonable, the agency may reverse, change, modify or suspend the same accordingly. Any decision, order or determination made after such rehearing reversing, changing, modifying or suspending the original determination shall have the same force and effect as an original decision, order or determination.

History: 1975 c. 94 s. 3; 1975 c. 414; 1977 c. 139; 1979 c. 208; 1985 a. 182 s. 33t; Stats. 1985 s. 227.49.

227.53 Parties and proceedings for review. (1) Except as otherwise specifically provided by law, any person aggrieved by a decision specified in s. 227.52 shall be entitled to judicial review thereof as provided in this chapter.

(a) 1. Proceedings for review shall be instituted by serving a petition therefor personally or by certified mail upon the agency or one of its officials, and filing the petition in the office of the clerk of the circuit court for the county where the judicial review proceedings are to be held. If the agency whose decision is sought to be reviewed is the tax appeals commission, the banking review board, the consumer credit review board, the credit union review board, the savings and loan review board or the savings bank review board, the petition shall be served upon both the agency whose decision is sought to be reviewed and the corresponding named respondent, as specified under par. (b) 1 to 5.

2. Unless a rehearing is requested under s. 227.49, petitions for review under this paragraph shall be served and filed within 30 days after the service of the decision of the agency upon all parties under s. 227.48. If a rehearing is requested under s. 227.49, any party desiring judicial review shall serve and file a petition for review within 30 days after service of the order finally disposing of the application for rehearing, or within 30 days after the final disposition by operation of law of any such application for rehearing. The 30-day period for serving and filing a petition under this paragraph commences on the day after personal service or mailing of the decision by the agency.

3. If the petitioner is a resident, the proceedings shall be held in the circuit court for the county where the petitioner resides, except that if the petitioner is an agency, the proceedings shall be in the circuit court for the county where the respondent resides and except as provided in ss. 77.59 (6) (b), 182.70 (6) and 182.71 (5) (g). The proceedings shall be in the circuit court for Dane county if the petitioner is a nonresident. If all parties stipulate and the court to which the parties desire to transfer the proceedings agrees, the proceedings may be held in the county designated by the parties. If 2 or more petitions for review of the same decision are filed in different counties, the circuit judge for the county in which a petition for review of the decision was first filed shall determine the venue for judicial review of the decision, and shall order transfer or consolidation where appropriate.

(b) The petition shall state the nature of the petitioner's interest, the facts showing that petitioner is a person aggrieved by the decision, and the grounds specified in s. 227.57 upon which petitioner contends that the decision should be reversed or modified. The petition may be amended, by leave of court, though the time for serving the same has expired. The petition shall be entitled in the name of the person serving it as petitioner and the name of the agency whose decision is sought to be reviewed as respondent, except that in petitions for review of decisions of the following agencies, the latter agency specified shall be the named respondent:

1. The tax appeals commission, the department of revenue.
2. The banking review board or the consumer credit review board, the commissioner of banking.

3. The credit union review board, the commissioner of credit unions.

4. The savings and loan review board, the commissioner of savings and loan, except if the petitioner is the commissioner of savings and loan, the prevailing parties before the savings and loan review board shall be the named respondents.

5. The savings bank review board, the commissioner of savings and loan, except if the petitioner is the commissioner of savings and loan, the prevailing parties before the savings bank review board shall be the named respondents.

(c) A copy of the petition shall be served personally or by certified mail or, when service is timely admitted in writing, by first class mail, not later than 30 days after the institution of the proceeding, upon each party who appeared before the agency in the proceeding in which the decision sought to be reviewed was made or upon the party's attorney of record. A court may not dismiss the proceeding for review solely because of a failure to serve a copy of the petition upon a party or the party's attorney of record unless the petitioner fails to serve a person listed as a party for purposes of review in the agency's decision under s. 227.47 or the person's attorney of record.

(d) The agency (except in the case of the tax appeals commission and the banking review board, the consumer credit review board, the credit union review board, the savings and loan review board and the savings bank review board) and all parties to the proceeding before it, shall have the right to participate in the proceedings for review. The court may permit other interested persons to intervene. Any person petitioning the court to intervene shall serve a copy of the petition on each party who appeared before the agency and any additional parties to the judicial review at least 5 days prior to the date set for hearing on the petition.

(2) Every person served with the petition for review as provided in this section and who desires to participate in the proceedings for review thereby instituted shall serve upon the petitioner, within 20 days after service of the petition upon such person, a notice of appearance clearly stating the person's position with reference to each material allegation in the petition and to the affirmance, vacation or modification of the order or decision under review. Such notice, other than by the named respondent, shall also be served on the named respondent and the attorney general, and shall be filed, together with proof of required service thereof, with the clerk of the reviewing court within 10 days after such service. Service of all subsequent papers or notices in such proceeding need be made only upon the petitioner and such other persons as have served and filed the notice as provided in this subsection or have been permitted to intervene in said proceeding, as parties thereto, by order of the reviewing court.

History: 1971 c. 243; 1975 c. 94 s. 3; 1975 c. 414; 1977 c. 26 s. 75; 1977 c. 187; 1979 c. 90, 208, 355; 1985 a. 149 s. 10; 1985 a. 182 ss. 37, 57; Stats. 1985 s. 227.53; 1987 a. 27, 313, 399; 1991 a. 221.

The circuit court has no jurisdiction of an appeal from the tax appeals commission where the petition for review was served only on the department of revenue and not on the commission within the allowed 30 days. Brachtl v. Dept. of Revenue, 48 W (2d) 184, 179 NW (2d) 921.

Service on the department of a notice of appeal by ordinary mail, when received in time and not promptly objected to is good service. Service on a staff member of the department is sufficient if in the past that individual has represented himself as agent and as attorney for the department. Hamilton v. ILHR Dept. 56 W (2d) 673, 203 NW (2d) 7.

An appeal will not lie from an order denying a petition to reopen an earlier PSC order where no appeal was taken from the order or the order denying rehearing within 30 days. Town of Caledonia v. Public Service Comm. 56 W (2d) 720, 202 NW (2d) 912.

Failure to strictly comply with the caption requirements of (1) does not divest a court of jurisdiction if all other jurisdictional requirements are met. Evans v. Dept. of Local Affairs & Development, 62 W (2d) 622, 215 NW (2d) 408.

Where the taxpayer failed to serve a copy of his petition for review of a decision and order of the tax appeals commission upon the department of revenue within 30 days, the circuit court had no jurisdiction. Cudahy v. Dept. of Revenue, 66 W (2d) 253, 224 NW (2d) 570.

The implied authority of the PSC under various provisions of ch. 196, to insure that future supplies of natural gas will remain as reasonably adequate and sufficient as practicable indicates a legally recognized interest of the environmental group members living in the area affected by the commission order in the future adequacy of their service which is sufficient to provide standing if the facts alleged in the petition are true to challenge the commission's failure to consider conservation alternatives to the proposed priority system. Wisconsin's Environmental Decade, Inc. v. PSC, 69 W (2d) 1, 230 NW (2d) 243.

County has standing to challenge validity of rule not adopted in conformity with ss. 227.02 through 227.025, 1983 stats. Dane County v. H&SS Dept. 79 W (2d) 323, 255 NW (2d) 539.

"Parties" under sub. (1) (c), 1975 stats., are those persons affirmatively demonstrating active interest in the proceedings; PSC must identify parties. Wis. Environmental Decade v. Public Service Comm. 84 W (2d) 504, 267 NW (2d) 609 (1978).

Ch. 801 is inapplicable to judicial review proceedings. Omernick v. DNR, 94 W (2d) 309, 287 NW (2d) 841 (Ct. App. 1979).

Service on department rather than on specific division within department was sufficient notice under this section. Sunnyview Village v. Adm. Dept. 104 W (2d) 396, 311 NW (2d) 632 (1981).

Where petitioners lacked standing to seek review and where intervenors filed after time limit in sub. (1), intervenors could

not continue to press claim. Fox v. DHSS, 112 W (2d) 514, 334 NW (2d) 532 (1983).

See note to s. 1.11, citing Milwaukee Brewers v. DH&SS, 130 W (2d) 56, 387 NW (2d) 245 (1986).

Two-part test for determining whether party has standing under sub. (1) discussed. Waste Management of Wisconsin v. DNR, 144 W (2d) 499, 424 NW (2d) 685 (1988).

County has standing to bring petition for review because petition initiates special proceeding rather than action. Richland County v. DH&SS, 146 W (2d) 271, 430 NW (2d) 374 (Ct. App. 1988).

Delivery of a petition to an agency attorney did not meet the requirements for service under sub. (1) (a) 1. Weisensel v. DHSS, 179 W (2d) 637, 508 NW (2d) 33 (Ct. App. 1993).

Unofficial text from 91-92 Wis. Stats. database updated to 93 Wis. Act 125