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STATE OF WISCONSIN

CIRCUIT COURT

RACINE COUNTY

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In re the Petition to Incorporate the  
Village of Bohners Lake, Racine County

Case No. 96-CV-939

Nancy Vaccaro, Representative of  
the Petitioners for the  
Incorporation of the Village  
of Bohners Lake, and said Petitioners

Petitioners

vs.

Town of Burlington  
City of Burlington

Intervenors

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DETERMINATION OF THE WISCONSIN DEPARTMENT OF ADMINISTRATION

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## 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, Wis. 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. s. 66.016:

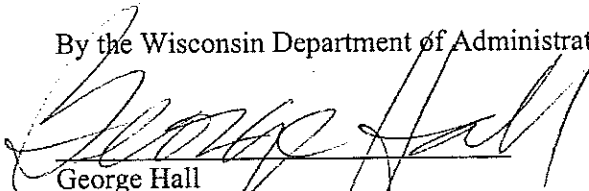
STANDARD 1 (a),	Homogeneity and compactness- Met
STANDARD 1 (b),	Territory beyond the Core – Met
STANDARD 2 (a),	Tax revenue – Met
STANDARD 2 (b),	Level of services - Not Applicable
STANDARD 2 (c),	Impact on the remainder of the towns – Met
STANDARD 2 (d),	Impact on the metropolitan community - Not Applicable


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) 3, Wis. Stats., is as follows:

Having met the applicable standards for incorporation as set forth in s. 66.016, Wis. Stats., the Department finds that the petition as submitted shall be granted and an incorporation referendum held.

Dated this 19th day of March, 1999.

By the Wisconsin Department of Administration:

  
George Hall  
Director of Municipal Boundary Review  
Wisconsin Department of Administration

  
Mark Saunders  
Deputy Legal Counsel  
Wisconsin Department of Administration

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## 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.

### 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)

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)) is very informative in analyzing the standards to be used in the instant matter.

The petitioners assert that attributes found to be lacking in Pleasant Prairie (compactness in land area, homogeneity of population distribution, and community identity) are present in Bohners Lake.<sup>1</sup>

The intervenors, on the other hand, note that Bohners Lake lacks certain attributes specifically required in Pleasant Prairie, such as urban characteristics, internally-oriented shopping and social customs, and employment practices.<sup>2</sup>

Pleasant Prairie is clear, however, regarding the flexibility allowed 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. 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 the presence of a community center. "*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).

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<sup>1</sup> Petitioners, *Brief in support of incorporation*, February 25, 1997, pp. 1-3; *Reply to the brief of the Town of Burlington*, March 11, 1997, pp. 1-2.

<sup>2</sup> Intervenors, *Brief in opposition to incorporation*, February 24, 1997, pp. 2-6.

Therefore, the flexibility is primarily in regard to consideration of additional non-enumerated factors, rather than flexibility in elimination, removal or reduction of a 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 perfect (there may be some street circulation problems, or no health care facilities or telephone exchange), but, when taken as a whole, the facts support a finding of homogeneity and compactness (for example, in transportation patterns) and a finding of a reasonably developed community center.

## ANALYSIS

The territory comprising the proposed village of Bohners Lake<sup>3</sup> is part of a growing area in southwestern Racine County. The territory surrounds a 136 acre kettle lake from which the proposed village is named. The proposed village area lies directly south of the city of Burlington, and contains an estimated population of 1,970 people (derived from 1990 quarter section data compiled by the Southeastern Wisconsin Regional Planning Commission, hereinafter cited as SEWRPC), and occupies approximately 4.4 square miles of territory. See Appendix 1 for a legal description taken from the incorporation petition, and the following Map 1, page 6, showing the territory in relation to the township from which the village is proposed to be created.

The proposed incorporation lies entirely within the town of Burlington. The developed part of the city of Burlington, with a population of 9,619 (1998 estimate)<sup>4</sup>, lies approximately 2 miles north of the proposed village boundary, occupying an estimated 5 square miles of the town of Burlington. A recently-annexed portion of the city extends southward and is contiguous to the proposed incorporation in Section 7, Town 2 North, Range 19 East, Town of Burlington. Two other townships are contiguous to the proposed incorporation: The town of Wheatland lies to the south in Kenosha County, and the town of Lyons lies to the west in Walworth County. From a regional perspective, the proposed incorporation is part of a growing area of Racine County, including the nearby city of Burlington, and villages of Waterford, Rochester, and Union Grove. Access to STH-36/83/11 along with a picturesque lake and natural features have made this an attractive location for low-density residential development since the 1920's when this area was first developed (see Map 2, page 7). The recently approved STH-36/83/11 bypass (currently opposed by citizen groups), if built, will further stimulate urban development in the area and provide a direct connection to Bohners Lake (see Map 3, page 8).

## NATURAL AND POLITICAL BOUNDARIES

The boundaries of the proposed area for incorporation appear to closely follow existing natural and political boundaries. The majority of the proposed area is within the Lower Fox River watershed, with a small section on the western edge of the proposed village in the White River/Nippersink Creek watershed. The eastern edge approximates the Springbrook/Fox River divide. The northern boundary was drawn to accommodate a proposed highway bypass to the city of Burlington.<sup>5</sup> The boundaries of the proposed incorporation follow existing natural features

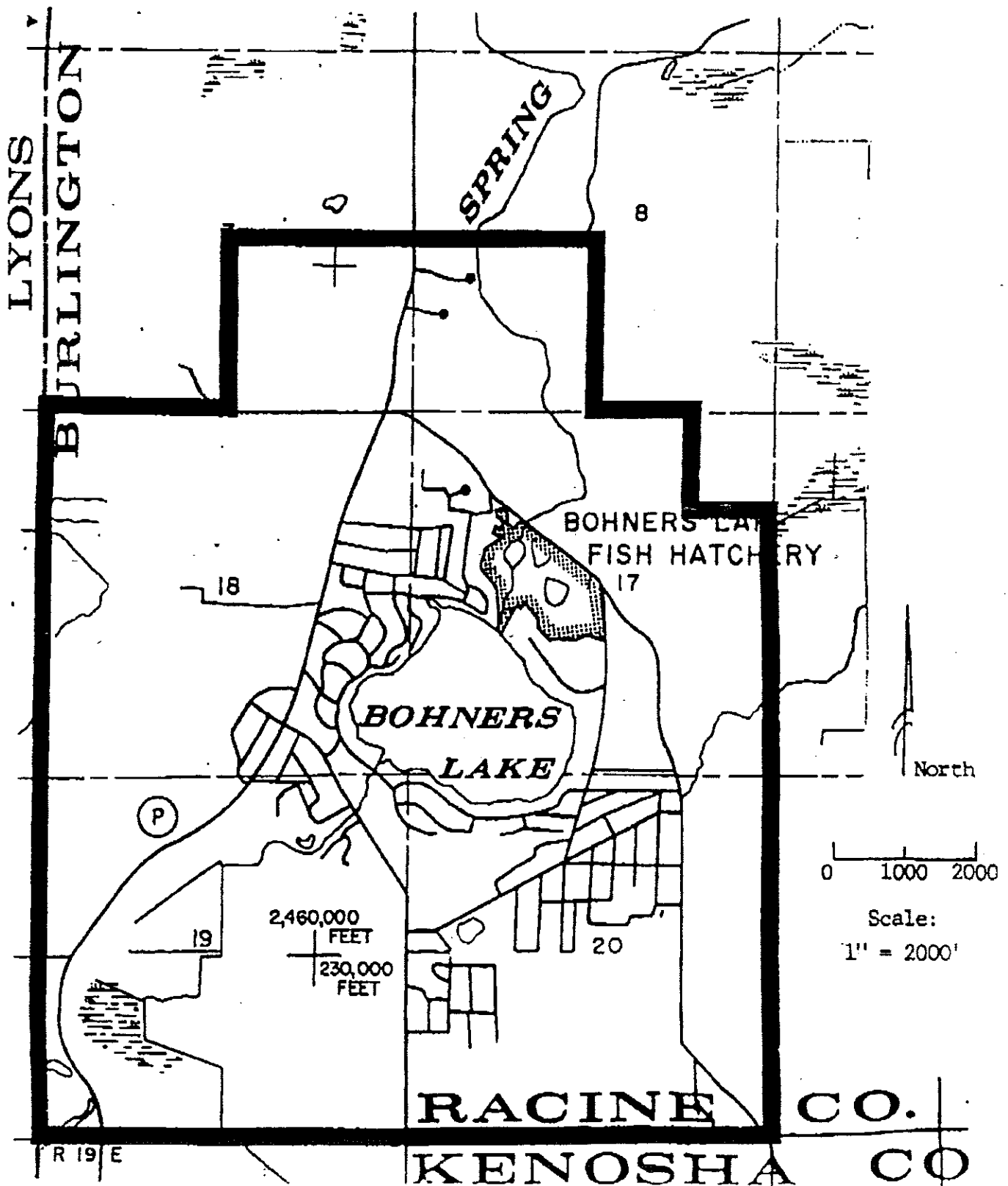
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<sup>3</sup> The place name "Bohners Lake" appears variously as "Bohners Lake," and "Bohner Lake." If incorporation occurs, the petitioners will have to choose which version to use.








<sup>4</sup> Wisconsin Department of Administration, Demographic Services Center, *Wisconsin Official Population Estimates 1998 Final*.

<sup>5</sup> Petitioners, *Brief in support of incorporation*, February 25, 1997, p. 5.

# BOHNER'S LAKE PROPOSED VILLAGE BOUNDARY

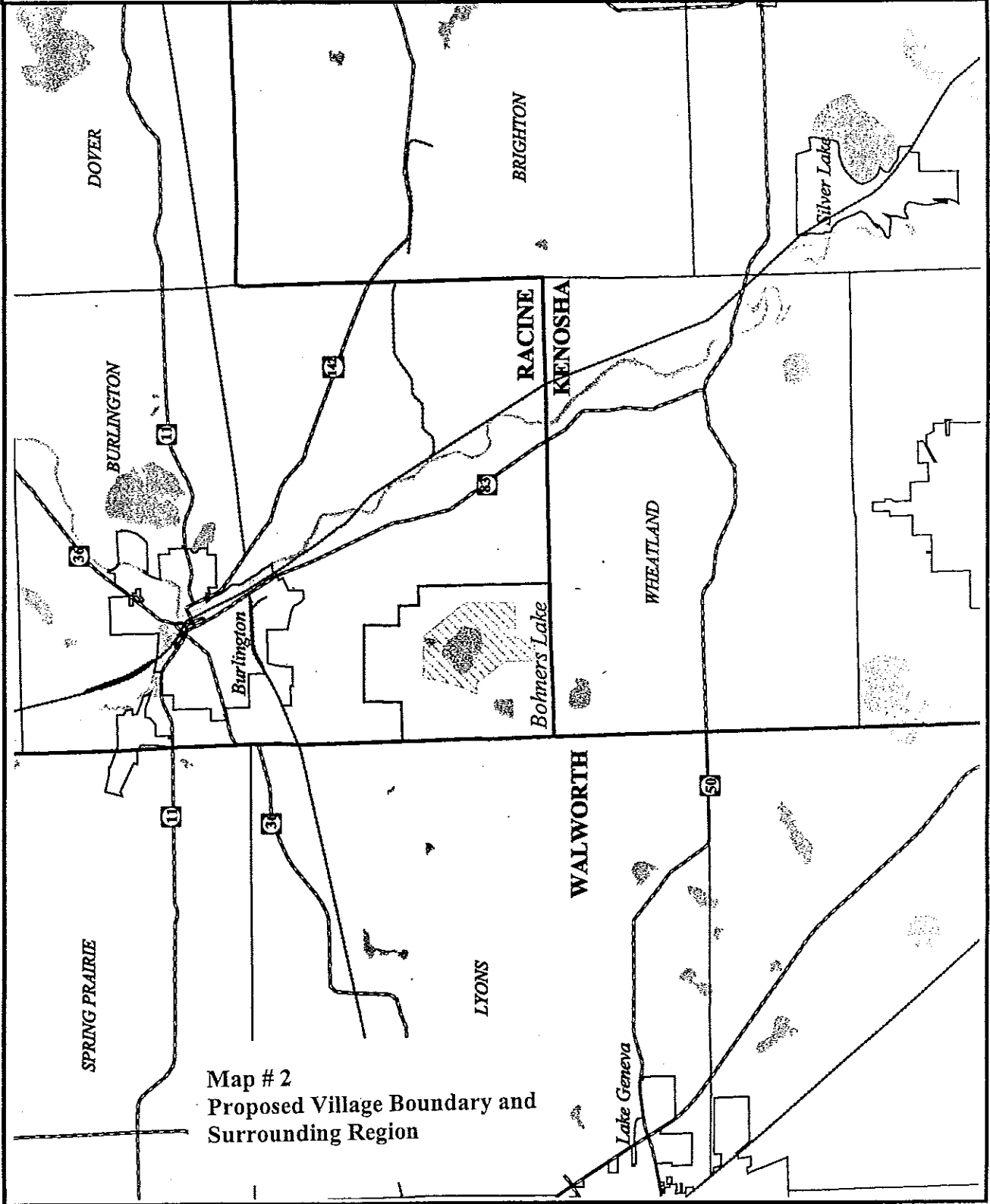


# Proposed Village Boundary of Bohners Lake

-  State and Federal Highways
-  Proposed Village Boundary
-  Counties
-  Sewer District
-  Municipalities
-  Railroads
-  Water



Created for: Municipal Boundary Review  
 Created by: GIS Service Center  
 Creation Date: 6/23/97



Map # 2  
 Proposed Village Boundary and  
 Surrounding Region



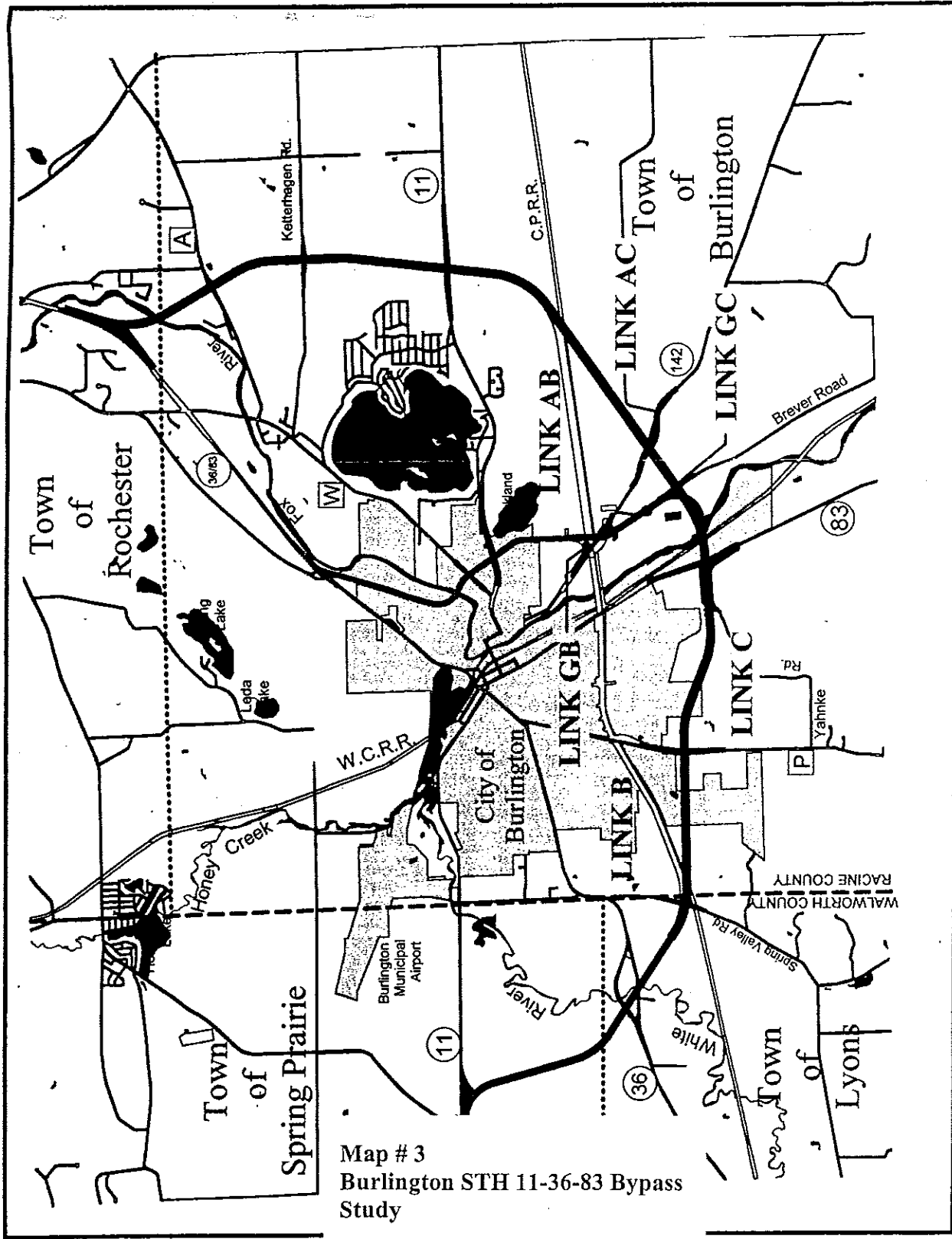
# BURLINGTON BYPASS STUDY

Project ID 3180-0000  
Racine and Walworth Counties

## LEGEND

- ALIGNMENT A
- ALIGNMENT G
- ALIGNMENT B
- Link AB
- Link GB
- Link B
- ALIGNMENT C
- Link AC
- Link GC
- Link C
- ALIGNMENT F

EXHIBIT S - A  
Bypass Alternative



Map # 3  
Burlington STH 11-36-83 Bypass Study

to the extent possible and, when necessary, default to a nearby section, town or county line. The western limit of the proposed village is contiguous with the town of Lyons and Walworth County. The southern boundary is contiguous with the town of Wheatland and the Kenosha County line.

### Bedrock Geology

The ground water system of southeastern Wisconsin involves three principal aquifers. The sandstone aquifer is the deepest and is composed of the Mount Simon, Eau Claire, Franconia, and Galesville sandstone's, and Trempeleau Formation of Cambrian age. Overlying these sandstone's are the Prairie du Chien Group, St. Peter Sandstone, and basal units of the undifferentiated Platteville, Decorah and Galena Formation of Ordovician Age. Groundwater in the sand and gravel (surficial) aquifer tends to flow to the Fox River, and on a more local basis, to nearby wetlands and streams. Both the sand and gravel, and sandstone aquifers are important sources of municipal and private water supply, with local wells having the potential to yield 1,000 gallons per minute, depending upon location.

In this eastern area of Racine County, relative shallow glacial deposits of 20-100 feet, consisting of sand, gravel, and organic material, cover Silurian (largely Niagaran) dolomite and Maquoketa shale. The shallow depth to bedrock in this north-south area along the Walworth/Racine County line is one reason why the town (and city) of Burlington lie in a zone of "most susceptible ground water contamination" (see Map 4, page 10) of this upper, or shallow aquifer, as well as being a location for active quarries (see the following paragraph discussing groundwater recharge and Bohners Lake). Although the layer of glacial drift and inter-connected dolomite of the shallow aquifer yields small to moderate amounts of water, most municipal wells penetrate the approximately 300-foot layers of dolomite and shale to tap the primary water-bearing deep aquifer lying in nearly 800+ feet of various sandstone layers. Groundwater within the deep aquifer moves eastward from a north-south recharge zone in the western one-half of Walworth County and the western one-quarter of Waukesha County.

### Bohners Lake<sup>6</sup>

A nearly circular shallow kettle lake (mean depth 9 feet, and 30-feet deep at the lowest part in the middle of the lake) of approximately 135.4 acres, Bohners Lake lies within a drainage basin (see Map 5, page 11) of approximately 1,958 acres. It has a diameter of approximately 0.5 miles, and 1.9 miles of shoreline. The only bays are an inlet channel and a small lagoon on the north end. Water levels are maintained by a dam with a 2-foot head located at the outlet on the north shore. A fish hatchery once operated by the Wisconsin Department of Natural Resources (hereinafter called the WDNR) includes the ponds, which lie beyond the lake's northern edge. Bohners Lake receives some water from a small stream originating in Dyers Lake (located in Section 30 immediately south across the Burlington town line in Kenosha County) that flows through the extensive wetlands located in Section 19, Town of Burlington. The outlet of Bohners Lake feeds Spring Brook, which meanders north and east, entering the Fox River in the city of Burlington.

A 1969 WDNR study<sup>7</sup> found that although only 25% of the shore (at that time) was "wild," the "...varied landscape with its wooded hills, sandy shores, and relatively weedless clear water rates Bohners Lake high in aesthetic features." The lake shoreline is predominately gravel, with sand and muck covering the remainder. About 40% of the shore is bounded by steep slopes, and one-half of this is accompanied by gravel and moderately steep slopes offshore. This study

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<sup>6</sup> Wisconsin Department of Natural Resources. "Bohner Lake Racine County: An Inventory With Planning Recommendations" Lake Use Report No. FX-25, (1969).

<sup>7</sup> Ibid.

# Proposed Village Boundary of Bohners Lake

Groundwater Contamination Susceptibility

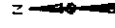
- Most susceptible
- Median susceptibility
- Least susceptible

Proposed village boundary  
 Counties  
 Water

"Groundwater contamination susceptibility is defined ... as the ease with which water (and any contaminant carried in the water) travels from the land surface to the top of the groundwater layer."

Wisconsin Department of Natural Resources

This data layer was created by the Wisconsin Department of Natural Resources by combining following five geographic data layers: bedrock depth, bedrock type, soil characteristics surficial deposits and water table depth. The attributes were then weighted to indicate the strength of each characteristic in determining groundwater contamination susceptibility.



Yards



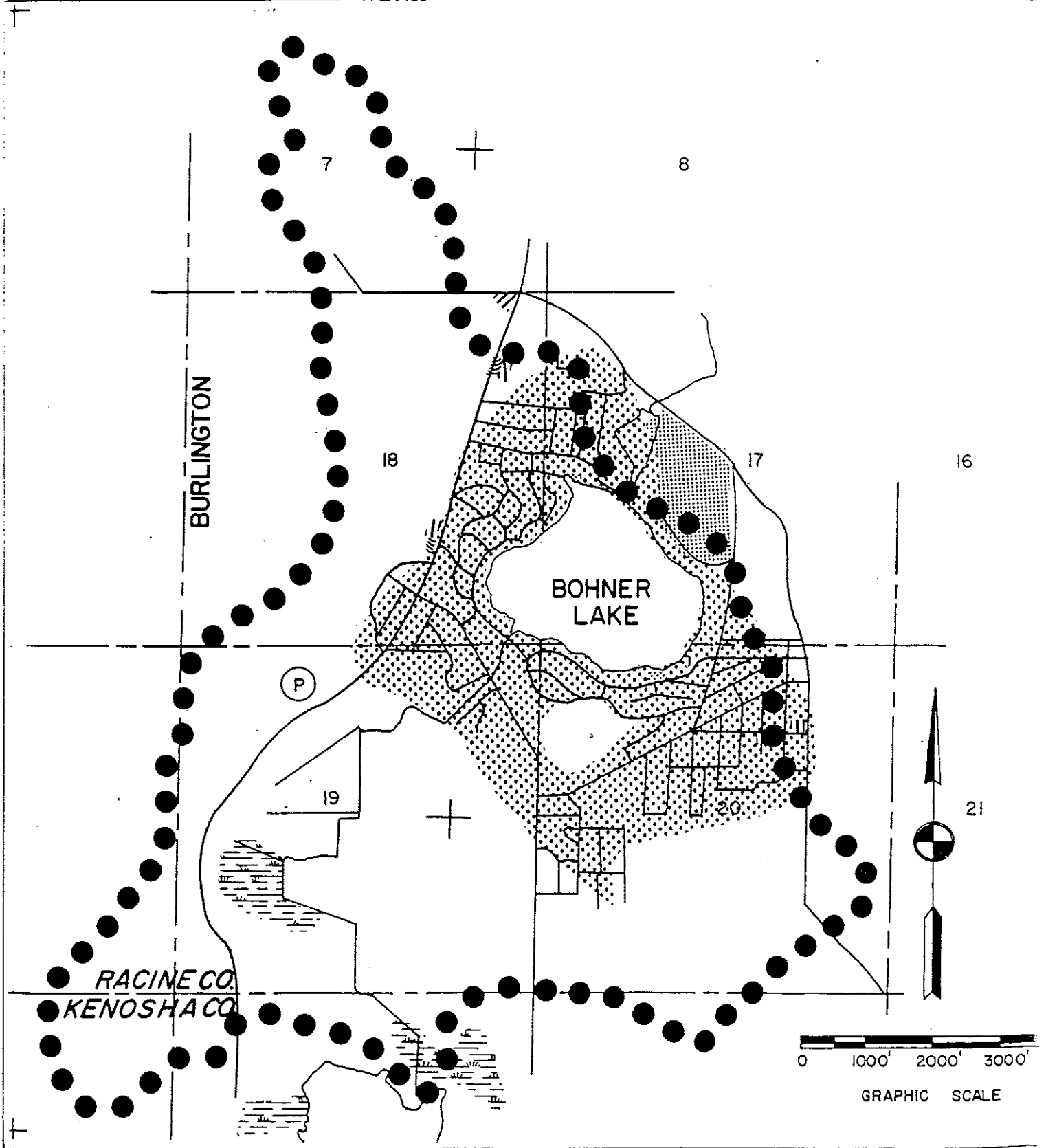
Created for: Municipal Boundary Review  
 Created by: GIS Service Center

RACINE  
 KENOSHA

WALWORTH

Map # 4  
 Groundwater Contamination  
 Susceptibility

Map # 5  
Regional Land Use Classification,  
WDNR

















MAP 3

EXISTING L

BOHNER LAKE, RACI

Map # 5 Continued, Legend

LEGEND

Local Zoning Classification		Regional Land Use Classification
R-1 RESIDENTIAL DISTRICT		LOW DENSITY RESIDENTIAL (0.5-7.2 PERSONS PER RESIDENTIAL ACRE)
B-1 COMMERCIAL DISTRICT		MEDIUM DENSITY RESIDENTIAL (7.3-22.8 PERSONS PER RESIDENTIAL ACRE)
		HIGH DENSITY RESIDENTIAL (22.9-59.2 PERSONS PER RESIDENTIAL ACRE)
		RETAIL AND SERVICES
		WHOLESALE AND STORAGE
		TRANSPORTATION, COMMUNICATION & UTILITY
		MANUFACTURING & QUARRYING
		GOVERNMENTAL & INSTITUTIONAL
		WOODLAND
		WETLAND
		PARK & RECREATIONAL
		WATER
AG AGRICULTURAL DISTRICT		AGRICULTURE AND AGRICULTURE-RELATED
		WATERSHED BOUNDARY

NING, 1967

COUNTY, WISCONSIN

T-2-N. R-19-E.

D.N.R., APR. 1969

(No current evaluative information is apparently available) suggested that fishing (for bluegills, largemouth bass, and northern pike), pleasure boating (50% of the lake is less than 5-feet in depth), water skiing, and swimming were popular summer-time activities. At the time this study was completed, there existed a town of Burlington park with 240-feet of shore, and 2 subdivision parks totaling 360-feet of shore. In this 1960's study, Bohners Lake "rates high in every aspect of recreational use."

Issues of concern noted in 1969 by the WDNR included the potential threat to lake water quality because of the (then) unsewered, densely-developed shoreline. This coincided with a mid-summer oxygen deficit, a lack of wildlife habitat adjoining the lake shore, abundant spawning habitat resulting in a stunted panfish population, marginal opportunities for predator-fish spawning, and limited public and community use facilities given the presence of 1,000+ swimmers on summer weekends. Town land use/boating regulations were then either non-existent or deemed inadequate for the Bohners Lake basin.

Currently, lake use is monitored by the town of Burlington Police Department's Water Patrol. According to Ron Shields, Sergeant of the Water Patrol unit, the town maintains a swimming area, beach and park on Bohners Lake. From mid May to mid September, there are about 12 people using these areas on most warm days and up to 50 people on extremely hot weekend days. An average of 6 utility boats launch at the beach daily Monday to Friday. Also during these months, an average of 8 utility and up to 10 ski or pleasure boats launch each Saturday, Sunday or holiday.<sup>8</sup>

The town of Burlington Police Department's Water Patrol enforces state boating regulations ss. 30.50 through 30.80, Wis. Stats., along with the town's water use ordinances. Examples of these regulations include that no motor boat may operate at greater than slow-no-wake speed (speed at which a boat moves as slowly as possible while still maintaining steerage control) between the hours of 7 p.m. and 10 a.m. and no more than two water skiers at a time can be pulled behind a boat.<sup>9</sup>

Continued high density development may cause water quality problems due to non-point source runoff that could increase phosphorous loading and potentially affect the lakes trophic rating (representing the level of nutrients in the lake, which lead to increased weed production). When the report was written the lake had a fairly shallow thermocline and was oxygen deficit during mid-summer. Overgrowth of aquatic vegetation was a problem during summer months. Vegetation overgrowth remain a problem, unless remedies have been implemented since the lake report was released, such as the current abandonment of individual septic systems and the installation of municipal sewers.

Since Bohners Lake is not currently part of a lake management district, it is not eligible to receive financial or technical assistance from such WDNR lake protection grants as lake rehabilitation, non point source water pollution control, and fish management. The residents of Bohners Lake have formed a voluntary organization, the Bohners Lake Improvement Association, which has as a goal the establishment of a sound lake management plan. These goals include such activities as applying for available lake planning grants, establishing a schedule for chemical weed spraying, analysis of fish populations and stocking fish, water quality testing, pumping out sludge from the inlet, studying boat activity, and other lake management activities. The organization also states

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<sup>8</sup> Personal communication with Ron Shields, Sergeant of Water Patrol, Town of Burlington Police Department, March 9, 1999.

<sup>9</sup> Ibid.

as a goal its intent to coordinate association activities with other lake organizations and the town board, and to improve communication regarding lake issues by establishing a press liaison. (Exhibit #16)

The proposed area for incorporation includes the entire wetland complex, which flows from Dyers Lake into Bohners Lake, as well as the wetland area immediately northeast of the lake that flows into Spring Brook. The petitioners note the included wetland area allows them to effectively regulate the lake system.

#### Lake Access

Bohners Lake has two boat launches for public use (Wisconsin Lakes, WDNR). Launches are located on the south and north ends of the lake. The current WDNR recommendation for public access, under guidelines established in NR 1.90 and 1.92, Wis. Admin. Code, is considered to be met on Bohners Lake.

#### Soils<sup>10</sup>

Three primary soil associations comprise the soils found in the area of Bohners Lake, with implications for vegetative cover, as well as for farming, road construction, building foundations, non-metallic mining, and surface and groundwater management. Map 6, on page 16, portrays the general locations of these three associations and briefly describes their characteristics. Most of the development occurring around Bohners Lake lies on the Fox-Casco or Casco-Rodman associations. The Hebron-Montgomery-Aztalan association typifies soils associated with lands adjoining the Fox River.

Within these soils associations lie specific soil types that may cover as little as one acre, to more than several hundred contiguous acres. Within a very short distance, soils may quickly change from being suitable for supporting building foundations, on-site septic systems, and road sub-base, to soils presenting severe shrink-swell problems, potential for groundwater contamination, and little bearing capacity for foundations and road sub-base. Map 7, on page 17 and Map 8 on page 18, portray a mosaic of these individual soil types. Of these specific soils types, several stand out as they characterize the soils in the area and either facilitate or present moderate to severe difficulties for urban development in the Bohners Lake area.<sup>11</sup>

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<sup>10</sup> Information for this section was obtained from: USDA. *Soil Survey: Kenosha and Racine Counties Wisconsin* Washington, D.C.: US, GPO, 1970. Soils are given greater treatment in this determination because the distinctions between soil types contribute to a better understanding of soils capable of supporting buildings, and the location of these soil types, because of the various estimates of "developable acres."

<sup>11</sup> Houghton (Ht), Matherton (MkA), Palms (Pa)

While it may be used intensively for agriculture, these muck and loamy soil types are found in basins and depressions, or along drainage ways, and have a water table and present severe problems (low bearing capacity and high shrink-swell) for road sub-bases, building foundations and onsite septic systems. These soil types are associated with both the inlet and outlet of Bohners Lake, and some of the shoreline, and cover several hundred acres.

#### Zurich (ZuA, ZuB, ZuC2)

Less suitable for crop use than Houghton (Ht), this soil type shares many of the same moderate-severe physical properties with the Houghton series for road sub-beds, and building foundations. Small amounts of Zurich soils lie in the northern portion of the proposed village. Zurich may present moderate problems for onsite septic systems.

#### Casco-Rodman (CcB, CcC2, CeB, CeB2, CeC2, CeD2, CoC, CoD, CrC, CrD2, CrE)

These soils are found on terraces, morainic ridges, and kettle holes, are not well-suited to crops, and instead are used for pastures and woodlands. They present slight problems for road sub-grades and

## Vegetation

The flora of the local area is typical of rural southeastern Wisconsin. Areas of native plant communities are characterized by upland hardwood forests including oak, basswood and maple. This section characterizes information obtained from the WDNR wetland mapping program (see Map 9, page 20 and its key on page 19), environmental corridors delineated by the Southeastern Wisconsin Regional Planning Commission (see Map 10, page 21), and the Wisconsin Natural Heritage Inventory database maintained by the WDNR.

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foundations on shallower slopes. Urban development on slopes of more than 12% (any soil type with a "D" or "E" following the first or second letter) may be problematic because of the high erosion potential, and moderate-severe soil bearing capacity on steeper slopes, and difficulty in revegetating and stabilizing cuts and fills. Much of the existing developed portion of Bohners Lake lies on these soils, with some development located on the steeper slopes. Casco-Rodman soils present moderate problems for onsite septic systems. Part of the southern shore of Bohners Lake, as well as the ridge tops west of CTH "P" are Casco-Rodman soils with a 20-35% slope.

Fox (FmB, FmC2, FoA, FoB, FoC2, FsA, FsB, FrA, FrB)

These well-drained clay-loam and silty clay soils found on ridges and high terraces immediately south and west of Bohners Lake. Extensively used for farming when flat. Sloping soils are erodible and present moderate problems for building foundations. Onsite septic systems located on these soils may contaminate groundwater.

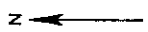
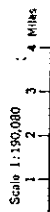
St. Charles (SeA, SeB)

Few limitations for crop use, this loamy, well-moderately drained soil occupies terraces on the west and northwest side of Bohners Lake. It presents slight problems for residential development, but does have low bearing capacity and is subject to frost heave. It presents slight problems for onsite septic systems. Mucky soils dominate the areas southeast and northwest of Bohners lake, making these areas undevelopable. In addition, the steep slopes in the northwestern corner of the proposed incorporated area are also unsuitable for development.

U. S. DEPARTMENT OF AGRICULTURE  
 SOIL CONSERVATION SERVICE  
 UNIVERSITY OF WISCONSIN, WISCONSIN GEOLOGICAL  
 AND NATURAL HISTORY SURVEY, SOILS DEPARTMENT,  
 AND WISCONSIN AGRICULTURAL EXPERIMENT STATION

# GENERAL SOIL MAP

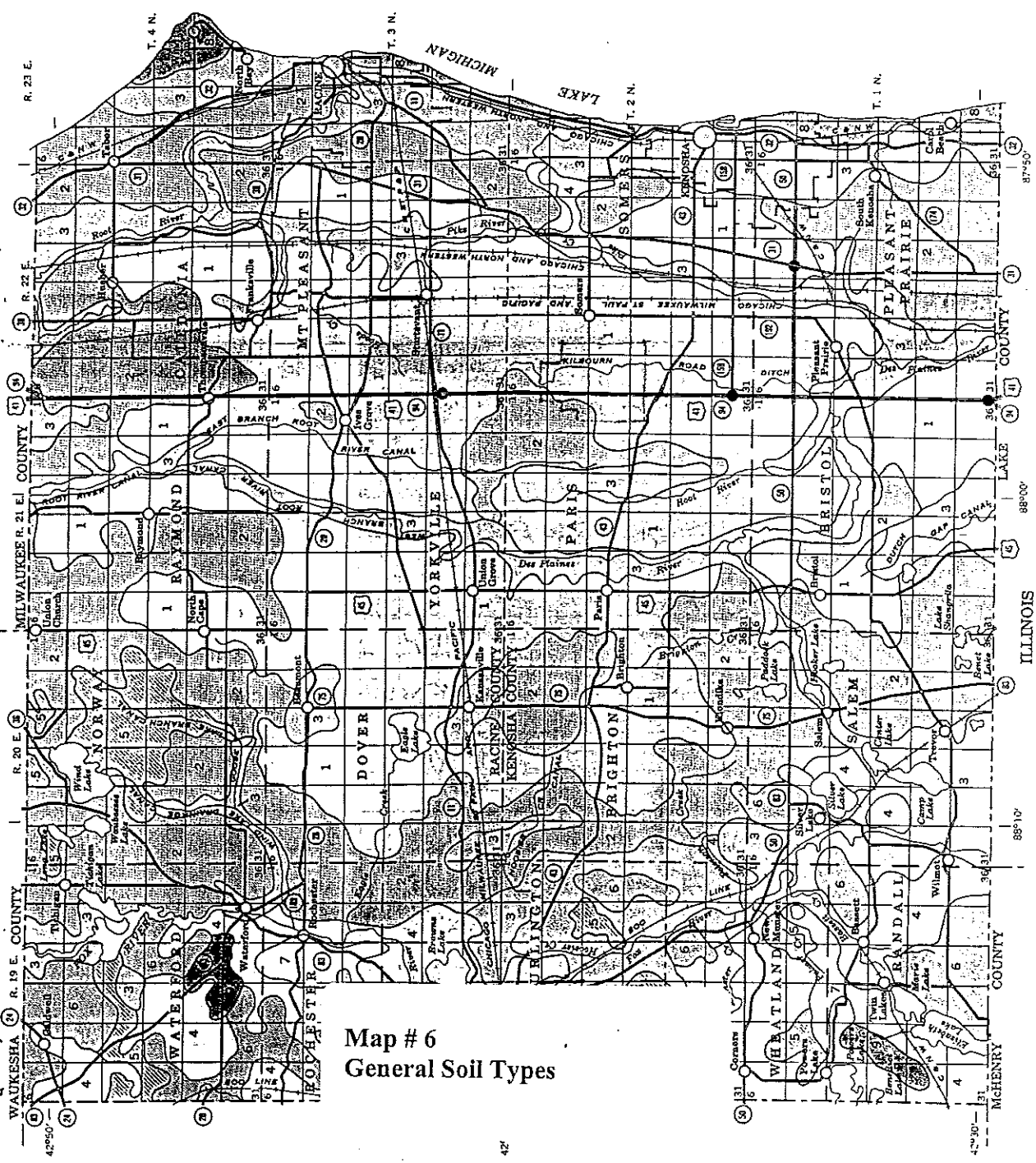
## KENOSHA AND RACINE COUNTIES, WISCONSIN



**NOTE—**  
 This map is intended for general planning.  
 Each delineation may contain soils having rat-  
 ings different from those shown on the map.  
 Use detailed soil maps for operational planning.

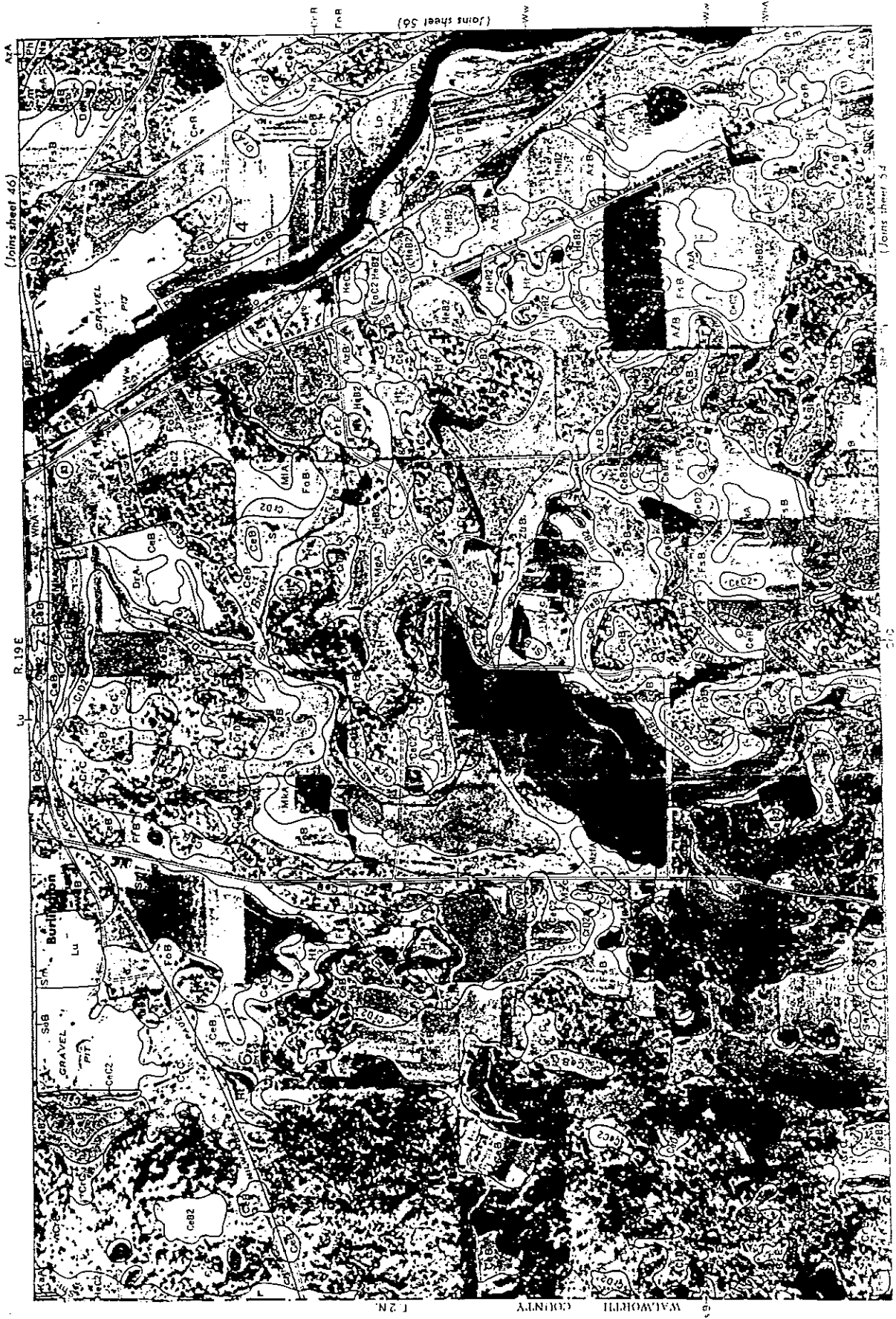
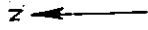
### SOIL ASSOCIATIONS

- 1 Yarno-Elliott-Ashkum association: Well-drained to poorly drained soils that have a silty clay loam to clay subsoil; formed in thin loess and the underlying clay loam or silty clay loam glacial till on ridges and knobs
- 2 Marley-Beecher-Ashkum association: Well-drained to poorly drained soils that have a silty clay or silty clay loam subsoil; formed in thin loess and the underlying clay loam or silty clay loam glacial till on ridges and knobs
- 3 Hebron-Montgomery-Azalea association: Well-drained to poorly drained soils that have a loam to silty clay subsoil; underlain by clayey to loamy lacustrine and outwash material on hills, knobs, and lake plains
- 4 Fox-Casco association: Well-drained soils that have a clay loam and silty clay loam subsoil; moderately deep to shallow over sand and gravel, on stream terraces
- 5 Houghton-Palms association: Very poorly drained organic soils; in basins and depressions
- 6 Miami association: Well-drained soils that have a silty clay loam and clay loam subsoil; formed in thin loess and the underlying loamy glacial till on ridges and knobs
- 7 Casco-Radman association: Well-drained and excessively drained soils that have a clay loam or gravelly loam subsoil; shallow over sand and gravel, on stream terraces and morainic ridges
- 8 Boyer-Granby association: Well-drained to very poorly drained soils that have a loam to sand subsoil; underlain by sandy glacial outwash on ridges and knobs and in drainageways and depressions
- 9 Warsaw-Plano association: Well-drained soils that have a loam to silty clay loam subsoil; moderately deep to deep over sand and gravel, on stream terraces

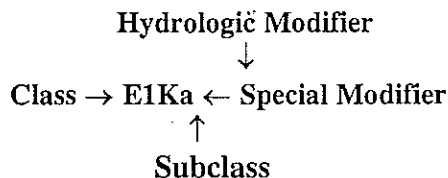


Map # 6  
 General Soil Types





**Table 1  
WDNR WETLANDS MAP KEY**



**Class and subclass**

**A Aquatic bed**

- 1 Submergent
- 2 Floating
- 3 Rooted floating
- 4 Free floating

**M Moss**

**E Emergent/wet meadow**

- 1 Persistent
- 2 Narrow-leaved persistent
- 3 Broad-leaved persistent
- 4 Nonpersistent
- 5 Narrow-leaved nonpersistent
- 6 Broad-leaved nonpersistent

**S Scrub/shrub**

- 1 Deciduous
- 2 Needle-leaved deciduous
- 3 Broad-leaved deciduous
- 4 Evergreen
- 5 Needle-leaved evergreen
- 6 Broad-leaved evergreen
- 7 Dead
- 8 Needle-leaved
- 9 Broad-leaved

**T Forested**

- 1 Deciduous
- 2 Needle-leaved deciduous
- 3 Broad-leaved deciduous
- 5 Needle-leaved evergreen
- 7 Dead
- 8 Needle-leaved

**F Flats/unvegetated wet soil**

- Subclass unknown
- 1 Cobble/gravel
- 2 Sand
- 3 Mud
- 4 Organic
- 5 Vegetated pioneer

**W Open water**

- Subclass unknown
- 1 Cobble/gravel
- 2 Sand
- 3 Mud
- 4 Organic
- 5 Vegetated pioneer

**Hydrologic modifier**

- L Standing water, Lake
- R Flowing water, River
- H Standing water, Palustrine
- K Wet soil, Palustrine

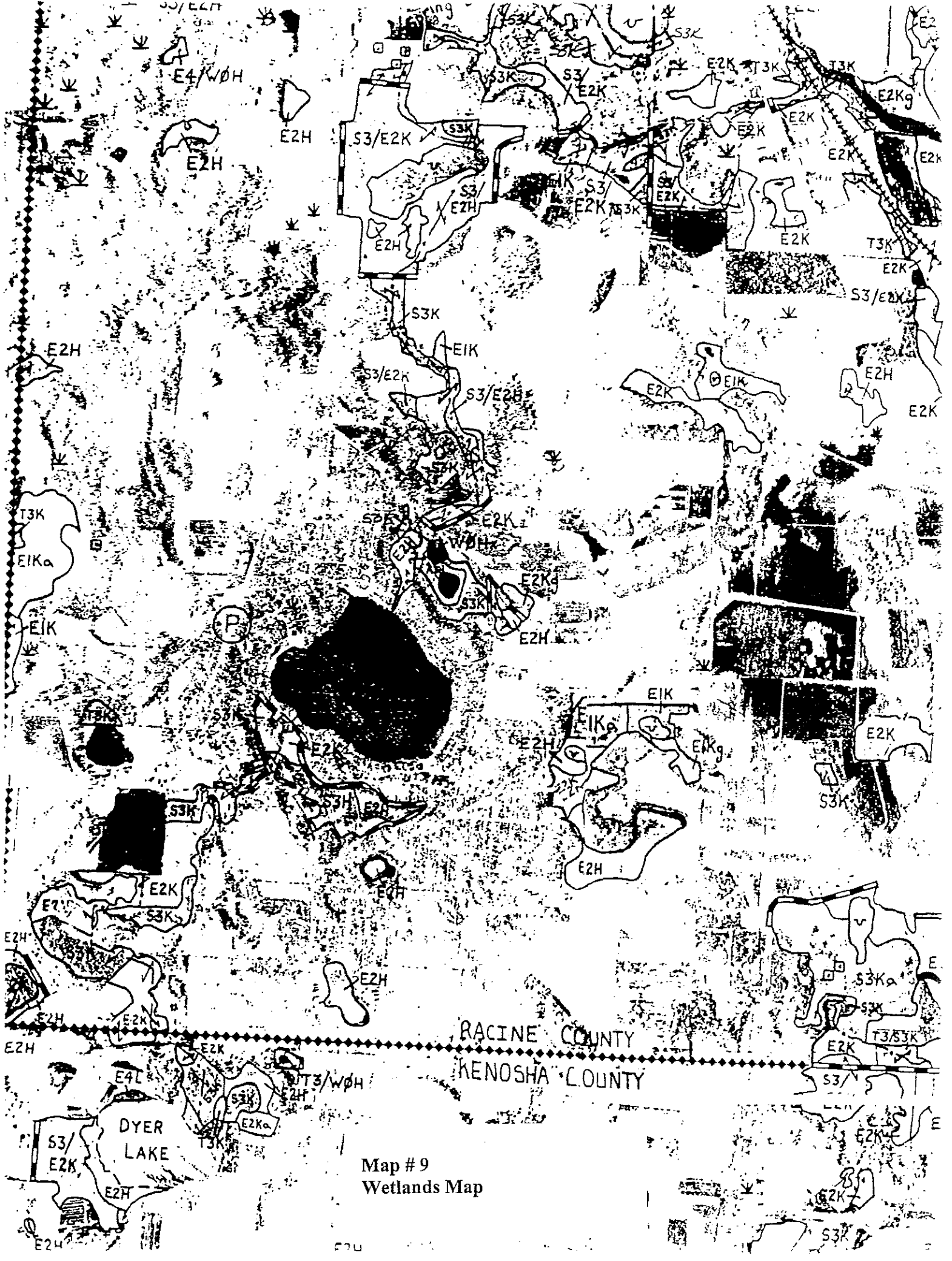
**Special modifiers**

- a Abandoned cropland
- c Manmade cranberry bog
- e Exposed flats complex
- f Farmed in dry years
- g Grazed
- j Central sands complex
- m Floating vegetated mats
- s Ridge and swale complex
- v Vegetation recently removed
- w Floodplain complex
- x Excavated
- r Red clay complex

**Map symbols**

- Upland surrounded by wetland
- Wetland -- upland boundary
- Wetland -- deep water lake
- .... Level ditch
- Stream or drainage ditch
- Road
- Railroad
- Dike, levee, abandoned railroad
- Same classification on both sides of linear feature
- ↓ Wetland smaller than 2 acres
- ⊗ Dammed pond smaller than 2 acres
- ⊗ Excavated pond smaller than 2 acres
- Man-made dam
- Spring within a wetland
- Beaver dam
- Municipal boundaries
- ◆◆◆ County boundary
- Township boundary

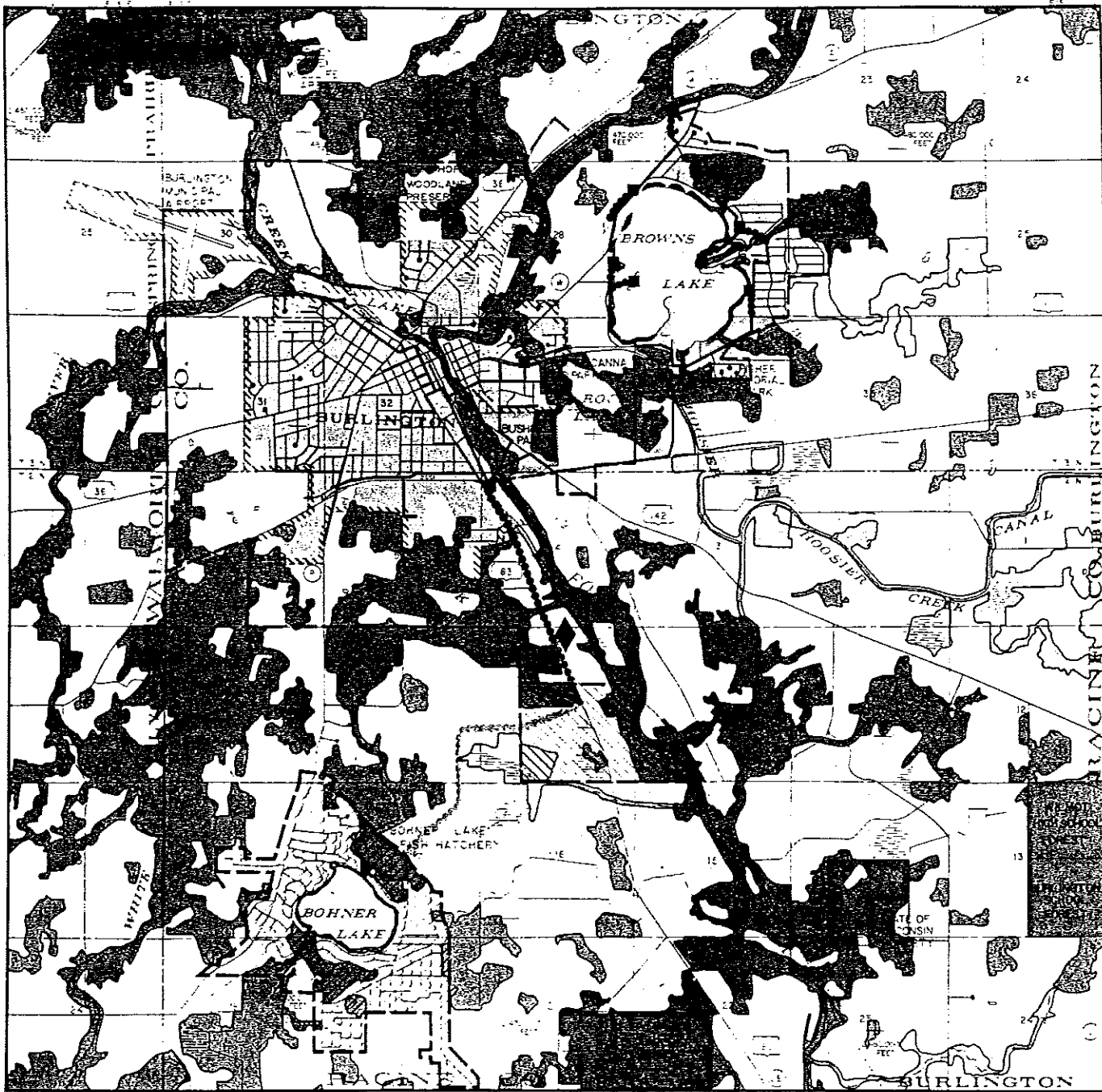
///// Area no longer wetland, field verified

















RACINE COUNTY  
KENOSHA COUNTY

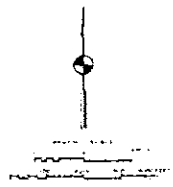
DYER LAKE

Map # 9  
Wetlands Map



**LEGEND**

- |   |  |
|---|--|
|  PRIMARY ENVIRONMENTAL CORRIDOR   |  GROSS SANITARY SEWER SERVICE AREA BOUNDARY |
|  SECONDARY ENVIRONMENTAL CORRIDOR   |  EXISTING PUBLIC SEWAGE TREATMENT FACILITY  |
|  ISOLATED NATURAL AREA  |  EXISTING LIFT STATION                      |
|  NET SANITARY SEWER SERVICE AREA (EXISTING)   |  EXISTING TRUNK SEWER                       |
|  NET SANITARY SEWER SERVICE AREA (2000)   |  EXISTING FORCE MAIN                        |
|  LANDS TO BE ADDED TO THE BURLINGTON SANITARY SEWER SERVICE AREA TO ACCOMMODATE PROPOSED INDUSTRIAL USES  |  PROPOSED LIFT STATION                      |
|  LANDS TO BE ADDED TO THE BURLINGTON SANITARY SEWER SERVICE AREA TO ACCOMMODATE EXISTING RESIDENTIAL USES |  PROPOSED FORCE MAIN                        |



Source: SEWRPC.

**Map # 10**  
**Environmental Corridors,**  
**SEWRPC**

Map 11, page 23, prepared for this incorporation review by SEWRPC, portrays various land uses, developed and natural, as they were recorded in 1990, for the study area.

An extensive woodland, the largest contiguous block remaining in Kenosha and Racine Counties, commences in the Northwest  $\frac{1}{4}$  of Section 18, Town of Burlington, and extends northward into the Western  $\frac{1}{2}$  of Sections 6 and 7, Town of Burlington. This primary environmental corridor (shown on Map 10, page 21) was included with lands proposed for local government ownership, or proposed to be protected through local land use regulation, by the Park and Open Space Plan for Racine County, prepared by SEWRPC.<sup>12</sup> A large section was annexed out of the center of this woodland by the city of Burlington. Quarrying is currently underway in this area, as initially permitted by the City of Burlington 6 years ago and annually renewed. The southernmost portion of the woodland lies partially within an approximately 80-acre pocket of the town of Burlington, with the remainder lying within the territory proposed for incorporation. The Northern one-third remains in the town of Burlington, adjoining the western border of the city of Burlington in the Northwest  $\frac{1}{2}$  of the Northwest  $\frac{1}{4}$  of Section 6, Town of Burlington. A small portion of this woodland extends into Walworth County, in the Eastern  $\frac{1}{2}$  of Section 12, Town of Lyons.

#### Wetlands

Map 6, page 16, and the associated key, Table 1, page 19, portray the wetlands inventoried by the WDNR in 1979, and updated in 1984 and 1987. These wetlands are of three primary types: Emergent wet meadows, populated by cattails, sedges and grasses; scrub meadows containing woody plants less than 20 feet tall along with willows, alder and young green ash; or forested meadows populated with woody, broad leaf deciduous plants taller than 20 feet typically consisting of black ash, elm and silver maple.

The wetlands, bog complex, and Spring Brook associated with Bohners Lake is also a designated primary environmental corridor (see Map 10, page 21), and lies almost completely within the territory proposed for incorporation. The exception being the northern most portion which flows north out of the territory proposed for incorporation. This portion is being annexed into and developed by the city of Burlington. The wetlands and bogs associated with Bohners Lake are in three general areas: the area on and near the southwest lakeshore (in Section 19) adjacent to a small inlet from Dyers Lake; a wetland east of the Oakwood Hills subdivision (Northeast corner of Section 20); and lands along Spring Brook (Section 19).

#### Wildlife

The Bohners Lake region supports a wide variety of wildlife species, both aquatic and terrestrial. Small upland game such as rabbit and squirrel, waterfowl, and deer are present in the vicinity of Bohners Lake. Fish surveys have found common and abundant fish species which include northern pike, largemouth bass, black crappie, bluegill, pumpkinseed, and walleye in the lake. As SEWRPC points out<sup>13</sup>, the area generally has been significantly altered since its original pre-settlement condition due to urbanization and agricultural practices. The continued presence of these species, as with any area experiencing urban development, is subject to continued habitat loss. In 1981, SEWRPC identified the area comprising the wetland tributary to Bohners Lake, (including the portion in the Southwest  $\frac{1}{4}$  of Section 19 extending to the settled lake edge, and the

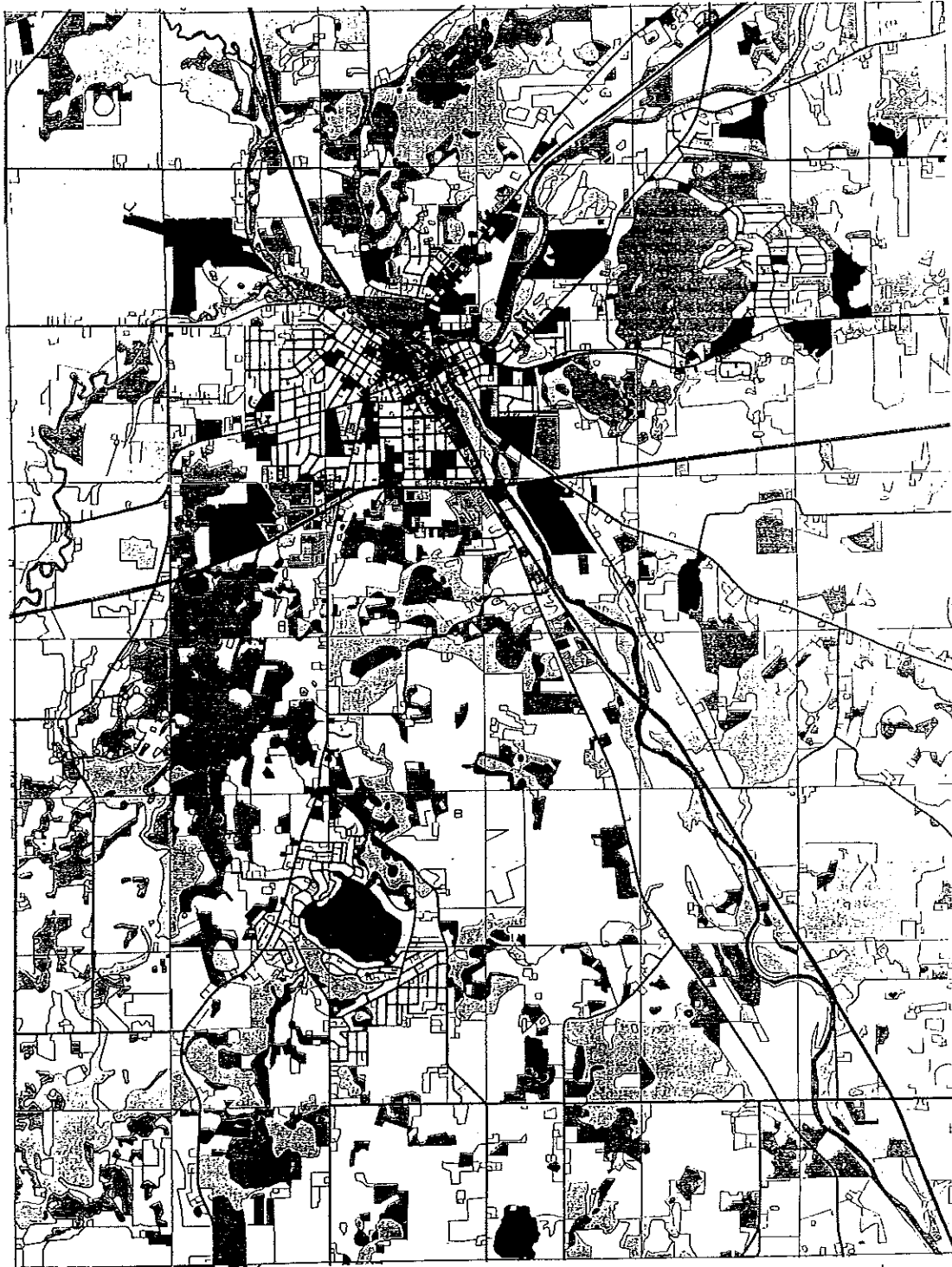
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<sup>12</sup> SEWRPC, *A Park and Open Space Plan for Racine County*, Community Assistance Planning Report No. 134, (Waukesha, WI: SEWRPC, September 1988), Map 1: p. 4.

<sup>13</sup> SEWRPC, *A Farmland Preservation Plan for Racine County*, Community Assistance Planning Report No. 46, (Waukesha, WI: SEWRPC, August 1981)..

Map # 11  
 Land Use Map,  
 SEWRPC

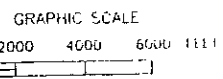
1990 LAND USE IN THE BURLINGTON/BOHNER LAKE STUDY AREA



- URBAN**
- RESIDENTIAL
    - SINGLE-FAMILY
    - ▨ MULTI-FAMILY
  - COMMERCIAL
  - ▨ INDUSTRIAL
- TRANSPORTATION, COMMUNICATIONS, AND UTILITIES
- STREETS AND HIGHWAYS
  - ▨ PARKING
  - ▨ OTHER TRANSPORTATION, COMMUNICATION, AND UTILITIES
- GOVERNMENTAL AND INSTITUTIONAL
- RECREATIONAL

**LEGEND**

- RURAL**
- SURFACE WATER
  - ▨ WETLANDS
  - WOODLANDS
  - EXTRACTIVE
  - ▨ LANDFILL
  - AGRICULTURAL AND OTHER OPEN LAND



wetland lying immediately north of Fish Hatchery Road extending north through Sections 17 and 8, containing Spring Brook), as high value wildlife habitat.<sup>14</sup> The contiguous forested area of steep slopes interspersed with small kettles and wetlands lying north-south along the western edge of Sections 19, 18, 7, 6, was considered low-value habitat, with the interspersed kettles/wetlands considered medium-value habitat. Coincidentally, the aforementioned areas are also identified as primary environmental corridor lands (see Map 10, page 21). See Map 12, page 25 for additional environmentally-related areas in the town of Burlington and Racine County.

#### Watershed boundaries

The survey township of Burlington lies within the Fox River watershed (see Map 13, page 26). The area is further delineated by the sub watershed of the White River which eventually flows into the Fox River.

#### Lake Recreation

A WDNR lake recreation rating, which encompasses a scale of 1 to 72, is not available for Bohners Lake. The rating system allocates points for conditions favorable for various types of recreation (boating, swimming, fishing and aesthetics). It is safe to assume that, as on most lakes, the most popular recreational activities on Bohners Lake include fishing, power boating, swimming, scenic viewing and water-skiing. Winter activities include ice skating, cross-country skiing, snowmobiling, and ice fishing.

#### *Environmental Corridors and Natural Areas<sup>15</sup>*

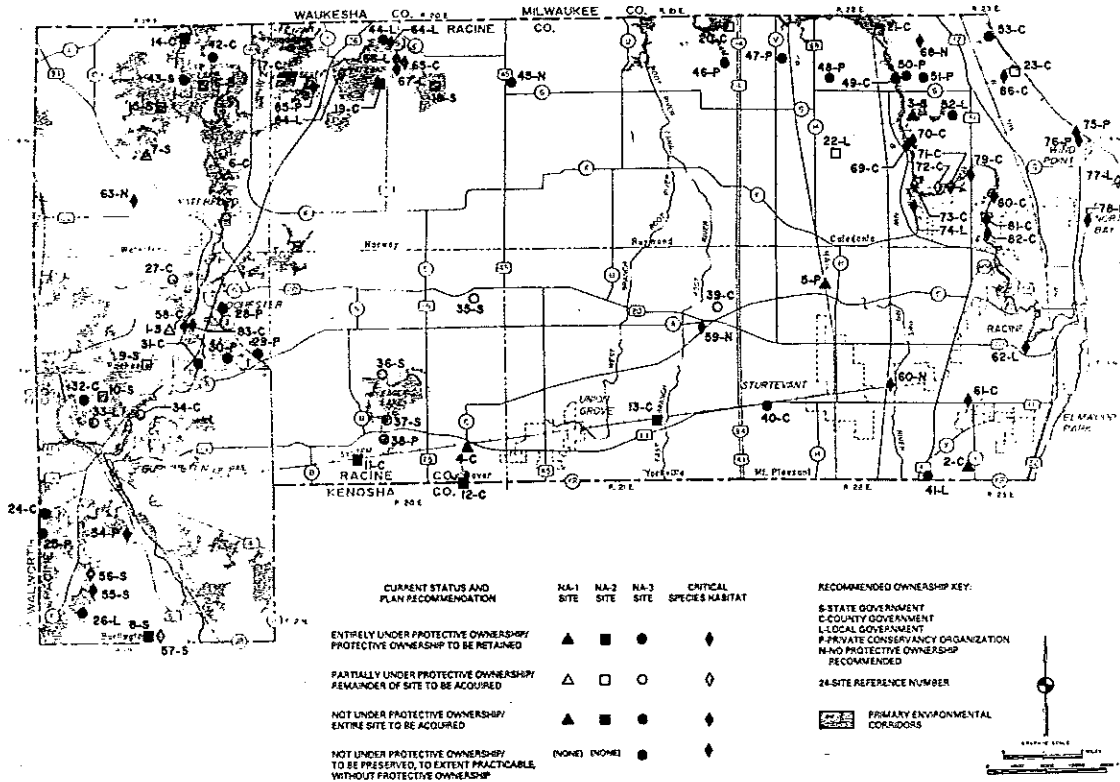
Map 10, page 21, portrays the adopted environmental corridors and natural areas within the proposed village area as designated by SEWRPC. Environmental corridors are defined as linear areas in the natural landscape containing concentrations of natural resources (including potential endangered and threatened species habitat) and related visual amenities such as steep slopes, wetlands, forested areas, remnant prairies, etc. 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. A primary environmental corridor extends from the Northeast ¼ of Section 19 to the Northwest ¼ of Section 20. The environmental corridor and wetlands are predominant in the Southern ½ of Section 19. The area northwest of Bohners Lake, extending along Spring Brook in Section 17, is also designated as a primary environmental corridor. A large primary environmental corridor extends along the edge of the Racine/Walworth County line, in the Western ½ of Section 18.

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<sup>14</sup>Habitat values are distinguished as follows: High-value habitat contains a high diversity of species at minimum viable population levels with conditions providing nesting, travel routes, concealment, etc., within areas experiencing little or no man-made disturbances, and located in proximity to other wildlife areas. Medium-value habitat mimic high-value habitat criteria at lower or minimal levels, and areas may have undergone disturbance or may not be located in proximity to other habitat. Low-value habitat are considered to have been considerably disturbed, or are remnants, but may provide the only available range in the area, or provide linkage corridors to high habitat areas (see preceding footnote 11, page 31, and Map 10, "Wildlife Habitat in Racine County: 1970", page 32).

<sup>15</sup>Natural areas, as defined by the Wisconsin Natural Areas Preservation Council, are tracts of land or water and associated shoreland so little modified by man's activity, or sufficiently recovered from the effects of such activity, that they contain intact native plant and animal communities believed to be representative of the pre-European settlement landscape. Natural areas are classified into one of the following four categories: state scientific area, natural area of state-wide or greater significance, natural area of countywide or regional significance, and natural area of local significance. See the SEWRPC Park and Open Space Plan for Racine County.

PLAN RECOMMENDATIONS FOR NATURAL AREAS AND CRITICAL SPECIES HABITATS IN RACINE COUNTY



Source: SEWRPC.

Reference Key to Map 5

Number	Site Name
1	Cherry Lake Sedge Meadow State Natural Area
2	Sanders Park Hardwoods State Natural Area
3	Renak-Polak Maple-Beech Woods State Natural Area
4	Kansasville Railroad Prairie
5	Franksville Railroad Prairie
6	Elm Island Bog-Island Oak Woods
7	Tichigan Fen
8	Karcher Springs State Natural Area
9	Brock Lake Fen
10	Leda Lake Fen-Meadow
11	Rosewood Railroad Prairie
12	Schroeder Road Marsh
13	Union Grove Railroad Prairie
14	Norris Marsh and Slough
15	Tichigan Marsh
16	Tichigan Wetlands and Low Woods
17	Waubesa Oak Woods and Tamarack Relict
18	Wind Lake Tamarack Swamp
19	Wind Lake Shrub-Fen
20	County Line Riverine Woods
21	Hunts Woods
22	Caledonia Wildlife Area
23	Cliffside Park Woods and Clay Banks
24	Burlington Railroad Prairie
25	Burlington Hills Woods
26	Bohner Lake Lowlands
27	Wadewitz Woods
28	Rowntree Road Woods
29	English Settlement Prairie
30	Eagle Creek Woods
31	Fox River Prairie
32	Honey Lake Leatherleaf Bog
33	Wehmhoff Park Upland Woods and Wetlands
34	Fox River Riverine Forest
35	Dover Wildlife Area Wetlands
36	Church Road Lowlands
37	Eagle Lake Wetlands
38	Vandenboom Road Marsh
39	Ives Grove Woods
40	Sylvania Railroad Prairie
41	Campbell Woods
42	Van Vallin Woods
43	Tichigan Wet Prairie





Number	Site Name
44	Wind Lake Wet Meadow
45	Six Mile Road Swamp
46	Kimmel Woods
47	Seven Mile Road Woods
48	Zirbas Woods
49	Caledonia Low Woods
50	Foley Road Woods—West
51	Foley Road Woods—East
52	Tabor Woods
53	Power Plant Ravine Woods
54	Burlington Cravasse Filling
55	Margis Wildlife Area
56	Ranger Mac Fen
57	Karcher Sedge-Carr
58	Ela Park Dry Prairie
59	Ives Grove Prairie Remnant
60	Wexdale Railroad Prairie
61	Pritchard Park Woods
62	Washington Park Woods
63	Maple Road Gravel Pit
64	Ervin Wetlands
65	Patzke Fen
66	Kriesser Fen
67	Landon Wetland
68	Sherwood Property
69	River Meadow Woods
70	Forked Aster Site
71	Caledonia Sanitary Sewer Right-of-Way
72	Caledonia Site South
73	Root River Bluff
74	Hoods Creek Swamp
75	Breakers Woods
76	Dominican Ravine
77	Wind Point
78	North Bay Ravine and Beach
79	Four Mile Road Woods
80	Caledonia Low Woods
81	River Bend Upland Woods
82	Root River Strip Woods
83	Ela Park Woods
84	Wind Lake
85	Waubesa Lake
86	Cliffside Park Old Field

Source: Wisconsin Department of Natural Resources and SEWRPC.

Map # 12  
Natural Areas and Critical  
Species Habitats, WDNR and  
SEWRPC

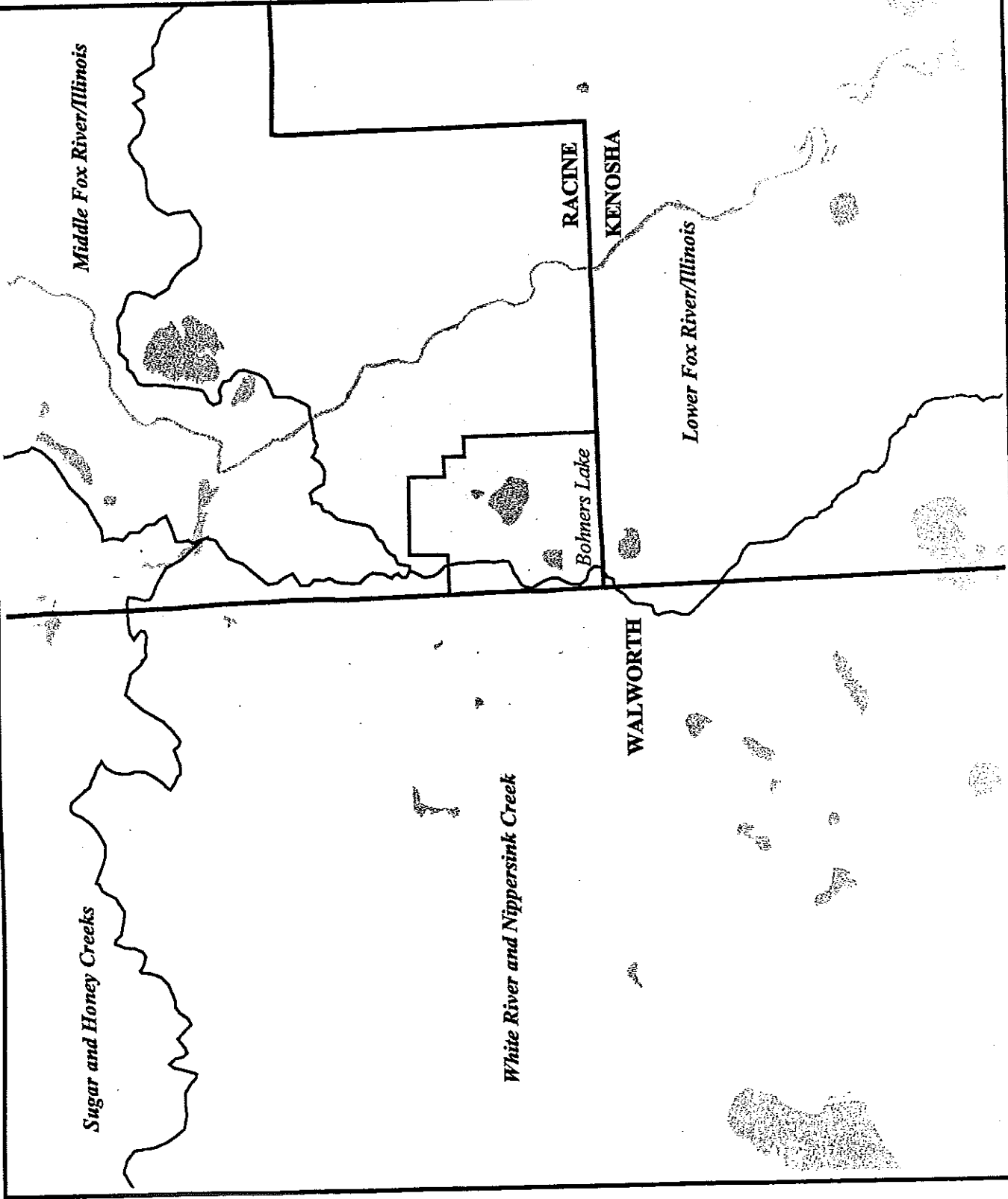
**Proposed Village Boundary  
of Bohners Lake**

**Map # 13  
Watershed Boundaries Map**

-  Proposed village boundary
-  Watershed boundaries
-  Water
-  Counties



Created for: Municipal Boundary Review  
Created by: GIS Service Center  
Creation date: 6/23/97



In addition to environmental corridors, isolated natural areas often provide critical wildlife habitats. They are smaller pockets of natural resources that are isolated from the environmental corridors by urban development or use, but have important natural value. They are also considered prime locations for local parks. SEWRPC defines these areas as wetlands, woodlands or wildlife habitat areas that have become isolated from environmental corridors due to urban development or agricultural uses. The protection and preservation of these sites should be encouraged and maintained by the local units of government. Map 10, page 21 also indicates the location of important isolated natural areas. There are five isolated natural areas either entirely or partly within the proposed village.

#### *Critical Species Habitat*

Critical species habitat refer to broadly defined tracts of land or water that support endangered, threatened, or rare plant or animal species. For the SEWRPC natural areas plan, critical species habitats were more narrowly defined as those sites which are located wholly or partly outside designated natural areas and which support endangered, threatened, or rare plant or animal species.<sup>16</sup> There are two critical species habitat areas in the proposed incorporation territory. Both of the habitats, the Margis Wildlife Area and the Ranger Mac Fen are north of Bohners Lake, and are recommended for preservation. Another important species habitat identified by the WDNR, but not SEWRPC, is the Tri-County Tamarack Swamp. Part of this natural wetland community is located within the proposed village.

#### *Open Space Preservation*

The plan recommends ongoing protection of parkways, environmental corridors, natural areas and flood lands so as to maintain and replenish the natural resource base of Racine County and to improve and enhance existing environmental quality. Two environmental parkways proposed for preservation are included in the territory proposed for this incorporation. One corridor is part of the Burlington Hills Woods in the western part of the proposed incorporated village, and a second corridor, Bohners Lake Lowlands, follows the stream and joining wetlands that flow into Bohners Lake, and Spring Brook as it leaves Bohners Lake. However, a majority of the Burlington Hills Woods corridor has been annexed to the city of Burlington and quarrying is underway. The protection of the areas designated primary environmental corridors from additional intrusion by incompatible land uses is one of the principal objectives of park and open space planning. Should incorporation occur, the village may be asked to provide the necessary regulation and partial funding so as to help meet these goals.

#### *Designated Parks*

Both public and private parks are found within the proposed village area.

Public parks include:

- John Margis Jr. Park- A Racine County Park located on the site of the former fish hatchery.
- A small township park is on the small bay on the northern end of Bohners Lake
- Winkler School Playground

Private parks/lake accesses/recreational areas include:

- Louis Fago Park- Open to the members of Oakwood Hills Subdivision.
- Julius Aukes Park- A beach area open to subdivision association members.
- Herb Leach Park- Open to association members.

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<sup>16</sup> SEWRPC, "Regional Natural Areas Plan Draft" *Newsletter* Vol. 37, No.1, (Waukesha, WI: SEWRPC, January-February 1997).

### Endangered Species

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 Wisconsin Legislature has found that the activities of both individual persons and governmental agencies are tending to destroy the few remaining plant-animal communities in this state. Therefore, the legislature has urged "all persons and agencies to fully consider all decisions in this light."

The WDNR has established by administrative rule 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 WDNR 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.).

The WDNR lists the following species for the Bohners Lake area (Last survey 1993):

(a) *Endangered species*

None found. However, comprehensive surveys have not been completed for the area, and it is possible that endangered species may occur in the area.

(b) *Threatened species*

White lady's slipper, (*cypridium candidum*), Observation date 1995. This plant species prefers moist, calcareous soils of wet or mesic prairies, or open fens. Blooms from May through June.

Kitten tails, (*bessya bullii*), Observation dates range from 1985 to 1993. This species prefers open, dry, gravelly, or sandy hilltops, slopes and streambanks. Usually blooms in May and June.

Blanding's turtle, (*emydoidea blandingii*), Also a Federal Species of Concern. Observed in 1981. Found in sedge meadows, backwater sloughs, prairie potholes, and large ponds, slow-moving rivers and swallow lakes. Breeding season occurs from April through September.

(c) *Species of special concern*

Ohio goldenrod, (*solidago ohioensis*), Observation date 1991. This species prefers low, calcareous marshes, fens, and beach ridges. Blooming is from August through September.

March blazing star, (*liatris spicata*), Observation for occurrence is 1991. This species prefers wet to wet-mesic prairies. Blooming occurs from July through August.

Small fringed gentian, (*gentianopsis procera*), Observation date 1991. This plant prefers calcareous prairies, fens, and gravelly-beaches. Blooming is from late August to early November.

Slender bog arrow-grass, (*treglochin palustre*), Observation date for occurrence in 1991. This species prefers calcareous sites, either marly or sandy. Blooming is from May through July.

Silver-spotted skipper, (*epargyreus clarus*), Observation date was in 1992. This butterfly prefers open forest habitats such as young, brushy second growth. Its chief caterpillar host is black locust. Flight period varies from June to August.

Mulberry Wing, (*poanes massasoit*), Observation 1992. A butterfly that prefers marshy areas. Flight period is July.

Black dash, (*euphyes conspicuus*), Observation in 1992. This butterfly prefers marshy areas. Flight period is July to mid-August.

In addition to the above listed species, vegetation surveys of the Burlington Hills Woods, Ranger Mac Fen and Bohner Lake Sedge Meadow produced 12 uncommon species. Observations were conducted from 1991 to 1993 by WDNR, Milwaukee Public Museum, and SEWRPC staff (Source: SEWRPC).

Comprehensive endangered resource surveys have not been completed for the study area. The lack of additional known occurrences does not preclude the possibility that other endangered resources may be present. However, within the territory proposed for incorporation, no critical habitat needs beyond the existing designated environmental corridors have been identified for these species.

#### Ambient Air Quality

The federal government has established minimum air quality standards which are intended to protect human health, as well as prevent damage to vegetation, real and personal property, and improve visibility. Based upon these standards, non-attainment areas---areas having ambient air quality conditions that do not meet the federal standards---have been identified. Upon adoption of a regional air quality management plan, all of Racine County was designated as an ozone non-attainment area. Racine County is currently designated as a non-attainment area. The area containing this proposed incorporation is still designated as a "non-attainment" zone today. A non-attainment designation requires that new development and industry follow the ambient air quality standards of the federal government. In some instances, this could preclude the development of some types of heavy industry. However, existing land uses within the territory, along with uses proposed for the territory that are contained in local, county and regional plans, are deemed compatible with the existing ambient air quality requirements.<sup>17</sup> Auto emissions testing and reformulated gasoline are also requirements in non-attainment areas.

#### Transportation Plans and Existing Facilities

SEWRPC is the designated Metropolitan Planning Organization (MPO) for the seven-county area including Racine County. SEWRPC assures that the region continues to meet federal transportation planning requirements. By maintaining up-to-date transportation plans, SEWRPC maintains eligibility for Federal Highway Act and Urban Mass Transit Act cost-sharing for qualifying local transportation related projects.

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<sup>17</sup> WDNR, *Expanding Industry in Wisconsin: A guide to meeting air quality requirements*, 1997, p. 28.

SEWRPC develops a Transportation Improvement Plan (TIP) for the Wisconsin Department of Transportation (WisDOT) to prioritize eligible transportation projects and allocate federal and state matching funds to local governments in the seven county area (including Racine County). WisDOT has adopted a preferred route for the STH 11-36-83 bypass south of the city of Burlington (see Map 3, page 8). Area residents have recently voiced opposition to this preferred route.

### *Streets and Highways*

Map 10, page 21, portrays the location and extent of the street and highway system improvements located in the proposed village.

The area proposed for incorporation is served by county trunk highways, local connectors, neighborhood roads and a handful of private drives or "mill tax roads." The county highways serving the area, including CTH "P" which runs between the city of Burlington and Bohners Lake, are classified as major collectors in the WisDOT Rural Functional Classification System (November, 1986). Fish Hatchery Road, on the East side of the lake, is designated as a minor collector. All of the property within the proposed territory is accessible by local roads.

The 1996 annual average daily traffic count figures show CTH "P" to be well under the peak capacity level identified by WIDOT for major collectors. Based on a level of service that permits isolated instances of restricted movement at peak times, 9,160 trips/day is considered capacity for a major collector. A recent count for the segment of CTH "P" between the city of Burlington and Bohners Lake found 7,000 trips/day. This count on CTH "P" gradually decreases as it runs south of the city of Burlington. The count falls to 3,100 trips/day as CTH "P" passes through the southwestern portion of the area proposed for incorporation.<sup>18</sup>

The traffic count for Fish Hatchery Road, the second busiest road that passes through the incorporation area, is 1,500 trips/day. This is well under capacity level. Fish Hatchery Road provides interconnection to many local streets within the proposed incorporation. Traffic counts are unavailable for the rest of the local roads in the Bohners Lake area.<sup>19</sup>

The street configuration of subdivisions in the proposed territory provides several points of ingress and egress, and it seamlessly interconnects several subdivisions. There are many route options inside the residential subdivisions providing convenient access to nearly all homes in the most densely populated area around Bohners Lake. Homes in the area northeast of the lake are less accessible by road due to the surrounding wetlands and the old fish hatchery; the natural features associated with the former fish hatchery are part of an environmental corridor and are protected by provisions that limit additional road construction in the area.

The use of alternatives to motor vehicle transportation such as walking and bicycling is made precarious and sometimes even dangerous due to the lack of sidewalks and minimal road shoulders. Children are especially at risk. However, roads within the more recently developed subdivisions are usually wide enough to accommodate vehicles, pedestrians and bicycles. All roads where sewers were recently installed, which is actually the majority of the local road network, are slated to be widened to the standard 20-22-foot paved cross-section, plus additional shoulder width, which should result in safer walking and biking conditions. The current road network, combined with low density settlement patterns, makes consideration of various forms of mass transit for the area difficult.

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<sup>18</sup> Personal communication with Doug Dalton, WisDOT, Madison office, July 8, 1997.

<sup>19</sup> Ibid.

The intervenors provided a report, dated January 1997, indicating that nearly every road in the territory proposed for incorporation would need some type of repairs within two years, at a total estimated cost of \$631,697. Most of this work would accommodate the planned sanitary sewer construction (Public Hearing Exhibit L). The town indicated that as of February 1999, sewer construction was complete. This included a gravel base course over the trench and a 2-inch asphalt binder course on the roads. Currently the town is working toward completing the roads including base preparation, base patching, manhole rings, asphalt binder, asphalt top and gravel shoulders.<sup>20</sup> This work will take place over the next two years and is projected to cost approximately \$1.6 million.<sup>21</sup> The Department (MBR) conducted a field visit on March 3, 1999 and noticed that almost all roads within the proposed village boundaries had been completed, with manholes lying flush with the road surface.<sup>22</sup> Such a surface, depending upon local traffic conditions, the original condition of the roadway, and the quality of the recent roadwork, could conceivably last several seasons without additional work.

### *Rail Transportation*

No active rail lines run through the territory proposed for incorporation.

### Previous Political Boundaries

The borders of the proposed village are entirely within the town of Burlington and are contiguous to the east with the town of Burlington, to the south with the Kenosha County boundary, and to the west with the town of Lyons boundary. The city of Burlington has annexed territory which is nearly contiguous to the proposed boundary to the north. A small 80-acre private parcel (Sun Ray Hills) comprising the South-1/2 of the Southwest ¼, Section 7, Town of Burlington, remains in the town, and is surrounded by the town of Lyons (Walworth County) on the west, the city of Burlington on the north, and the petitioned territory on the east and south. This isolated town tract resulted from an annexation to the city of Burlington occurring after the publication of the notice of intent to circulate an incorporation petition. Should incorporation occur, this parcel should be annexed to the proposed village so as to preserve the ecological integrity of the area.

The petitioned territory also contains the Bohners Lake Sanitary District which is entirely within and smaller than the area proposed for incorporation. This sewer district was formed in 1990 and is now fully operational. The sewer district is being extended to include a planned expansion to Winkler elementary school.

### Boundaries of School Districts

Under existing Wisconsin Statutes, boundaries of municipal governments do not affect school district boundaries. In Wisconsin, school districts are free to establish and maintain boundaries independent of residential development patterns. Should a change in school district boundaries be desired, the affected school districts would have to jointly agree to such a change. Therefore, school district boundaries, are not a factor, per se, in determining the characteristics attributed to an area proposed for incorporation.

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<sup>20</sup> Personal communication with Norbert Theine, town of Burlington Engineer, March 2, 1999 and March 4, 1999.

<sup>21</sup> Norbert Theine, *Projected Street Improvement and Reconstruction Costs: Bohner Lake Area in the Town of Burlington – Racine County, Wisconsin* (Town of Burlington, WI, February 1999).

<sup>22</sup> Wisconsin Department of Administration, Municipal Boundary Review field visit to proposed village area of Bohners Lake, Wisconsin, March 3, 1999, and letter, with attachments, dated March 15, 1999, from Attorney Richard Schultze, counsel for the Bohners Lake Sanitary District, to the Department.

### *Current Land Uses*

Land uses within the territory proposed for incorporation are predominately residential, with older residences located around the lake. A listing of existing business and institutions provided by the intervenors and a map showing business location in the 'core' area are depicted on Map 14, page 33. Scattered residential lots are found in otherwise transitional agricultural lands along Karcher, and Fish Hatchery Roads, and McHenry Street. A number of commercial, institutional, and recreational uses are located within the proposed "core" of the village. The areas directly southeast and northwest of the lake are dominated by single family residences. Just northeast of Bohners Lake is an old State Fish Hatchery some of which is now a Racine County Park. Land beyond the hatchery across Fish Hatchery Road is zoned conservancy and owned by the University of Wisconsin Board of Regents. There is a wetland on the south end of the lake beyond the first ring of homes. It is bordered by 6 streets: Gateway, Lakeshore, Cattail, Moss, Rishiman, and Bohner.

The following Table 2, page 34, portrays land use types by acreage, and Table 3, page 35, portrays subsequent land use changes occurring since 1970.

- |                               |                                 |
|-------------------------------|---------------------------------|
| 1 BEACHVIEW GROCERY           | 15 BOBULA CONSTRUCTION          |
| 2 HUNNY TREE                  | 16 ZELENSKI CARPENTRY           |
| 3 JERRY DOWNEY                | 17 BIRON SIGNS                  |
| 4 WHITE OAKS RESTAURANT       | 18 GARLAND CONCRETE             |
| 5 BURLINGTON GOLF             | 19 BB & W (UTILITY)             |
| 6 WARREN BUILDING             | 20 KEVIN'S LAWN CARE            |
| 7 ADVANTAGE AUTO BODY         | 21 LAKELAND FABRICATORS         |
| 8 COUNTRYSIDE PUB             | 22 MONKEY BUSINESS              |
| 9 TRANS-O-MATIC               | 23 COMMUNITY DISCOUNT CARPETING |
| 10 SUN RAY HILLS              | 24 POPANDA RUBBER STAMP CO.     |
| 11 JAKE'S ELECTRIC            | 25 QUALITY CONCRETE             |
| 12 KESSLER CLOCK SHOP         | 26 HEALTH ALTERNATIVES INC.     |
| 13 CHADWICK CONSTRUCTION      | 27 WBC ENTERPRISES              |
| 14 GEORGE'S UPHOLSTERY & TRIM | 28 WHENER TRUCKING              |

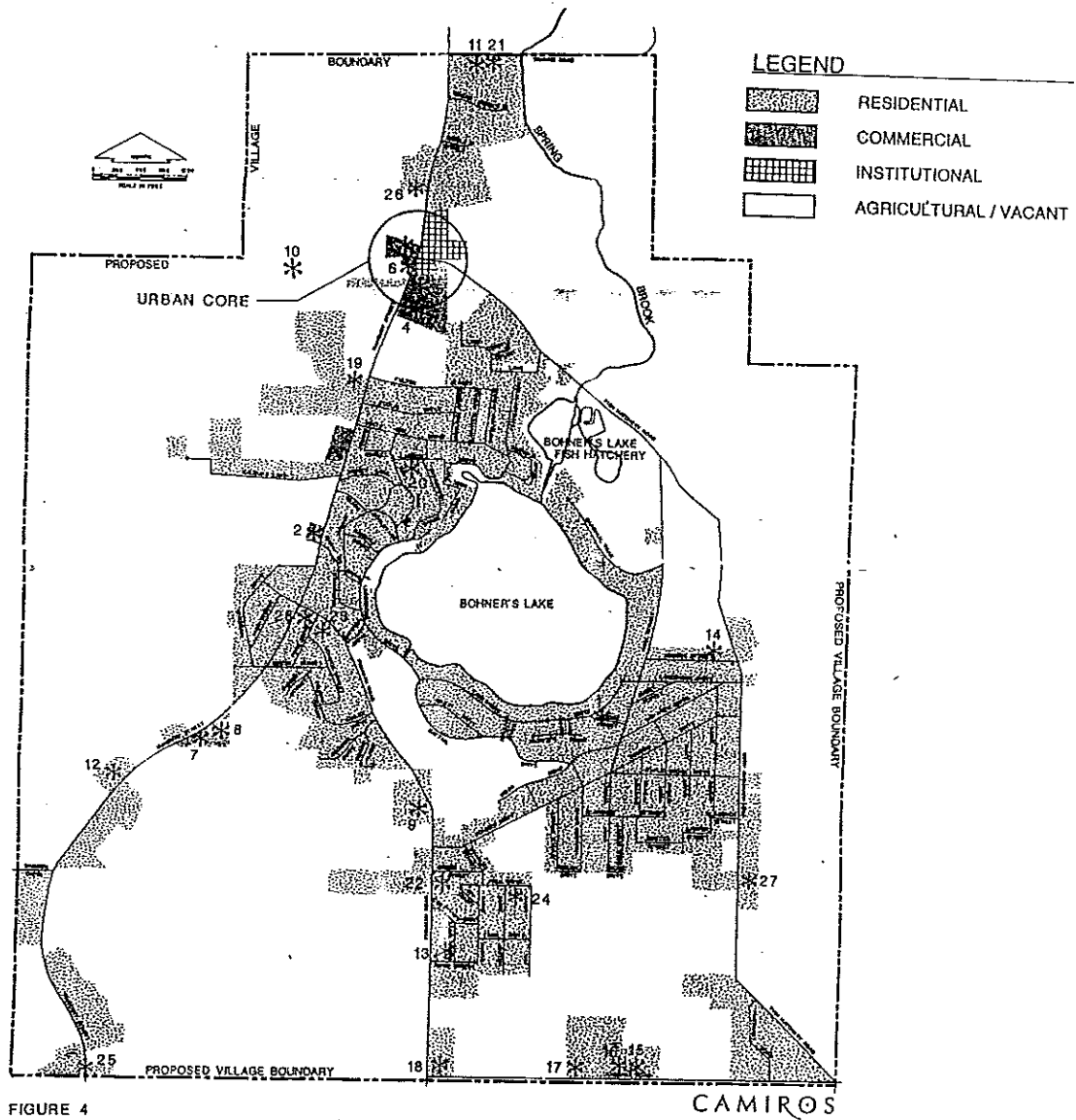


FIGURE 4  
PROPOSED VILLAGE OF BOHNER'S LAKE  
EXISTING LAND USE

**Map # 14**  
**Existing Land Use, CAMIROS**

Table 2

## ACREAGE BY LAND USE TYPE IN THE BOHNERS LAKE STUDY AREA

	1970	1980	1990
URBAN			
RESIDENTIAL			
SINGLE-FAMILY	393.3	435.63	460.4
MULTI-FAMILY	1.22	1.22	1.22
PARKING	0	0	0
SUBTOTAL	394.52	436.8	461.62
COMMERCIAL			
BASIC	3.65	8.06	8.69
PARKING	0.48	0.61	0.86
SUBTOTAL	4.13	8.67	9.55
INDUSTRIAL			
BASIC	4.41	2.67	2.99
PARKING	0	0	0
SUBTOTAL	4.41	2.67	2.99
TRANSPORTATION, COMMUNICATIONS UTILITIES	163.11	166.54	167.24
GENERAL PARKING	0	0	0
GOVERNMENTAL AND INSTITUTIONAL			
BASIC	2.16	3.55	3.94
PARKING	0	0.41	1.05
SUBTOTAL	2.16	3.96	4.99
RECREATION			
BASIC (PUBLIC AND PRIVATE)	12.05	17.61	17.62
PARKING	0	0	0
SUBTOTAL	12.05	17.61	17.62
UNUSED URBAN	0	0	0
URBAN SUBTOTAL	580.38	636.3	665.17
RURAL			
AGRICULTURE	1,261.34	1216.55	1124.4
WOODLAND	404.12	395.93	448.34
WETLANDS	379.26	382.04	392.91
WATER	141.07	141.05	141.06
EXTRACTIVE	5.48	6.89	0.73
LANDFILL	0	0	0
OTHER OPEN LAND	121.19	114.08	120.23
RURAL SUBTOTAL	2,312.46	2256.54	2227.67
GRAND TOTAL	2,892.84	2892.84	2892.84

Table 3  
 CHANGE IN LAND USE TYPES IN THE BOHNERS LAKE STUDY AREA  
 BY AMOUNT OF ACREAGE AND PERCENT

1970-80	1980-90	1970-90		1970-80	1980-90	1970-90
42.33	24.77	67.1		10.8%	5.7%	17.1%
0	0	0		0.0%	0.0%	0.0%
0	0	0		0.0%	0.0%	0.0%
42.33	24.77	67.1		10.7%	5.7%	17.0%
4.41	0.63	5.04		120.8%	7.8%	138.1%
0.13	0.25	0.38		27.1%	41.0%	79.2%
4.54	0.88	5.42		109.9%	10.1%	131.2%
-1.74	0.32	-1.42		-39.5%	12.0%	-32.2%
0	0	0		0.0%	0.0%	0.0%
-1.74	0.32	-1.42		-39.5%	12.0%	-32.2%
3.43	0.7	4.13		2.1%	0.4%	2.5%
0	0	0		0.0%	0.0%	0.0%
0	0	0		0.0%	0.0%	0.0%
0	0	0		0.0%	0.0%	0.0%
0	0	0		0.0%	0.0%	0.0%
1.39	0.39	1.78		64.4%	11.0%	82.4%
0.41	0.64	1.05		0.0%	156.1%	
1.8	1.03	2.83		83.3%	26.0%	131.0%
5.56	0.01	5.57		46.1%	0.1%	46.2%
0	0	0		0.0%	0.0%	0.0%
5.56	0.01	5.57		46.1%	0.1%	46.2%
0	0	0		0.0%	0.0%	0.0%
55.92	28.87	84.79		9.6%	4.5%	14.6%
-44.79	-92.15	-136.94	*	-3.6%	-7.6%	-10.9%
-8.19	52.41	44.22		-2.0%	13.2%	10.9%
2.78	10.87	13.65		0.7%	2.8%	3.6%
-0.02	0.01	-0.01		0.0%	0.0%	0.0%
1.41	-6.16	-4.75		25.7%	-89.4%	-86.7%
0	0	0		0.0%	0.0%	0.0%
-7.11	6.15	-0.96		-5.9%	5.4%	-0.8%
-55.92	-28.87	-84.79		-2.4%	-1.3%	-3.7%
0	0	0		0.0%	0.0%	0.0%

### *Residential Land Use*

Single-family housing constitutes the predominant land use in the area of the petition. Houses around the lake shore range from small seasonal cottages on small lots to larger upscale homes. Subdivisions containing moderate- to large-sized single-family homes have been developed adjacent to the older lake properties on former tracts of farmland.

Many of the early settlements in the southeastern Wisconsin region date from the completion of the U.S. Public Land Survey in the region in the 1830's, and the corresponding influx of European settlers.<sup>23</sup> Early settlements in the vicinity of Bohners Lake include the city of Burlington. The first Europeans settled around Bohners Lake in 1843 and established farms. Historic urban growth in this area can be traced primarily to the Summer-Haven Plat of 1922. In the 1940's the first Oakwood Hills subdivision was built, followed by many subsequent additions. Housing growth was generally focused around the lakeshore and consisted of summer cottages. Urban growth developed slowly around these settlements in arcs and concentric rings, rapidly expanding in some cases during the 1920's and 1950's.

According to SEWRPC,<sup>24</sup> most development occurred in the Bohners Lake area during the 1950's, when the lakeshore and adjoining lands were nearly totally developed. Additional development occurred in the 1970's and since 1985, as peripheral residential development occurred on the north, west, and southeast.<sup>25</sup> Recent aerial photography ("Orthophotograph of Sections 17-20, Township 2 North, Range 19 East, Racine County, Wisconsin, 1995, 1" = 400') shows a new road installed to access developable soils in the Southeast ¼ of Section 19, and MBR field visits have verified other new roads that have been constructed.

At the present time, little if any vacant, buildable land remains contiguous with, or nearly adjacent to, the lake. The advent of sewers has triggered new residential infill development on the remaining vacant parcels. Since the 1940's, subsequent subdivisions were platted on non-lake shore tracts of farmland that became available for sale. There are two new subdivisions platted within the last few years, all with homes currently under construction. Ridgeview Estates, on Country View Road, has 22 lots of 1.2 to 10 acres each. Country View Road terminates in a cul de sac. Another subdivision called Scenic Trails is developing in section 20, in the southeastern corner of the proposed village. It has two outlets on Fish Hatchery Road; one outlet is directly across from Pheasant Road. The development will have about 30 homes located on three main roads and covering 40 acres. Two of them end in large cul-de-sacs.

### *Commercial Enterprises*

A variety of commercial facilities are scattered through the Bohners Lake area, primarily on CTH "P." Many are cottage industries. The businesses currently exhibit little relation to each other geographically or by the mix of services offered. One is able to purchase such necessities as bread, milk, gas, toiletries, and very basic medical supplies. There are two general stores, a gas station, two restaurants, and two auto repair shops in the proposed village, in addition to other businesses, both seasonal and year round. The largest concentration of businesses is near the intersection of McHenry Street and Fish Hatchery Road. Five businesses are in this vicinity. They include Jerry's Storage, J&B Cycles, Sun Ray Hills, Burlington Golf, and White Oak Restaurant. Twenty-four businesses were identified by the petitioners during the Department's hearing. When the Department subsequently inspected the proposed incorporation area following the hearing, ten of the businesses listed showed no visible signage or other evidence of business activity. Of the fourteen businesses found, nine had visible business activity. Although there has been little

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<sup>9</sup> SEWRPC, *A Regional Land Use Plan for Southeastern Wisconsin – 2010 Planning Report No. 40*, (Waukesha, WI: SEWRPC, January 1992), p. 174, *et. seq.*

<sup>10</sup> *Ibid.* See Map 39, p. 175.

<sup>11</sup> *Ibid.*

or no increase in commercial land uses in the proposed territory over the last ten years, structures on CTH "P" devoted to business uses appear to be maintained in good repair and appear to be thriving.

The Bohners Lake area is like many other lake districts and small unincorporated hamlets in southeastern Wisconsin when it comes to shopping patterns. Not surprisingly, it was clear from citizen testimony at the hearing that most residents utilize one of the many community strip and large-scale regional malls and outlet centers that now exist in nearby Burlington, or Racine, Kenosha, and Milwaukee, for their planned shopping excursions. However, basic food and home needs are available within the proposed boundaries of the village and are utilized for unplanned stops, last minute needs and emergencies. If not, one would wonder how these smaller stores within the proposed Bohners Lake boundaries remain viable businesses. Interestingly, buildings constructed for commercial enterprises are not undergoing conversion to residential use, a characteristic found in other lake districts.

#### *Area Development*

According to land use inventory information developed by SEWRPC, single family residential home construction activity has resulted in the largest acreage change in land use type within the area. From 1970 to 1990, over 67.1 acres were converted to residential use. This is a 17.1% increase. Only 5.42 acres were converted to commercial use from 1970 to 1990, but this represents a 138.1% increase. Industrial land use in the town of Burlington has decreased by 1.42 acres, -32.2%, over the 1970 to 1990 time period. Transportation, communications, and utility land usage has increased by 4.13 acres, or 2.5%, and governmental and institutional by 2.83 acres, or 131%. Agricultural land use in the town of Burlington has decreased by 136.9 acres, or 10.9%, over the 1970 to 1990 time period. It is safe to assume that most of the change has been from agricultural to residential land use. These statistics do not reflect the recent subdivision plats, and infill development occurring within the petitioned territory.

Residential building permits issued during the 1993 to 1997 time period include: Section 20, which had 18 residential building permits issued; Section 19 had 11 residential permits issued, Section 18 had four, and section 17 had one residential permit issued. In contrast, over 880 building permits (for combined new dwelling and major-minor alterations) were issued for the entire town in 1998, with a high proportion being issued for the petitioned territory (information from the Town of Burlington as of March 16, 1999). Under the provisions of the R-1 zoning classification (5 acre lot minimum), new homes require at least 600 acres of land. Under R-2 zoning (40,000 sq. feet minimum), at least 110 acres would be developed.

The Petitioners argue that the land use patterns in the proposed Bohners Lake area are distinct from land use patterns with the remainder of the town. They note that the town of Burlington Land Use Plan (Hearing Exhibit 12) identifies Bohners Lake as a "residential growth node". Information (based on 1990 sources) provided by SEWRPC indicates that approximately 23% of the land in the proposed incorporation area has been converted to urban uses. In contrast, data on the whole town of Burlington shows an urban land use of 10.6%. Analysis by the Department presented in preceding sections suggests that far fewer than the 1,245 acres stated as developable by SEWRPC actually are available for development, due to unstable or wet soils, presence of steep slopes, and various combinations of slopes and wetlands/floodplain that serve to isolate otherwise buildable areas from one another. (This topic will be revisited in a later section of this determination, during the analysis of the requirements of s. 66.016 (1) (b), Stats.)

#### *Churches*

The proposed village area includes one church within its proposed boundaries--New Covenant Baptist Church on CTH "P" (McHenry Street), established in 1981. Staff at New Covenant estimate that there are approximately 70 parishioners, the majority of which are from the area proposed for incorporation (Hearing Exhibit C, p. 9). Churches of other denominations are found in both incorporated and unincorporated areas in the surrounding region.

### *Schools*

Winkler Grade School, located within the proposed territory, at the intersection of Fish Hatchery Road and CTH "P" (McHenry Street, see Map 15, page 39) is now for sale and a new school of 26,000 square feet accommodating 220 kindergarten through fourth-grade students is nearing completion. The current attendance area results in a current enrollment of approximately 130 1-5th grade students, the majority of which live in the proposed village (Burlington School District, and information from petitioners). The current attendance area includes territory to the north extending beyond the petitioner's boundary into the city and town of Burlington. The existing school has an old coal room converted into a gymnasium and a multi-purpose room that can be used for community functions, as well as a playground.

Winkler School currently has an adjusted capacity of 175. The enrollment at Winkler Elementary has ranged from 116 to 167 over the past 20 years. The existing school has six classrooms and a multi-purpose space. The original building was built in 1908 with additions in 1948, 1951, and 1955.<sup>26</sup> The new building is designed for future expansion and will be connected to the Bohners Lake Sanitary District.<sup>27</sup> Although only a block removed from the old school, the new elementary school is more centrally located within the residential-commercial zone along CTH "P", between Fish Hatchery Road and Fulton Street, as well as being more accessible to the internal local road system and facilitating pedestrian access.

### *Agriculture*

In 1963, Racine County had 148,717 acres of agricultural lands, and by 1985 the total was 137,196 acres. Agricultural lands decreased by 11,521 acres, or 7.7%, over this 22-year period. This represents an average loss of 523 acres per year.<sup>28</sup> About two-thirds of this total was considered prime farmland. Prime farmlands are identified on the basis of soils, the size of the individual farm units, and the size of the agricultural area comprised by the farm units. From 1963 to 1985, acres of prime farmland in Racine County decreased by 14.7%. The percentage of prime farmland lost was over twice the percentage for all agricultural lands during the same period, which is understandable because as determined by the existing private plumbing code, these are the soils which are also suitable for in-ground septic systems.

Within the territory petitioned for incorporation, only the northeast corner contains soils which meet Chapter 91 Stats., farmland preservation criteria: "The farm unit must be at least 35 acres in area; at least 50% of the farm must be covered by soils which meet the U. S. Soil Conservation Service standards for national prime farmland or farmland of statewide importance; and the farm units should be located in a block of farmland at least 100 acres in size" (standards in effect when the 1980 Farmland Preservation Plan was prepared for Racine County; the current 1999-2001 state budget bill, SB-45, proposes to eliminate the planning and zoning requirements of the Farmland Preservation Program).

With a healthy economy, low interest rates, and high number of housing starts, pressure to development agricultural lands has likely accelerated in the mid-1990's. However, an increasing number of local units of government have enacted zoning to preserve agricultural use. The rising prevalence of exclusive agricultural zoning which prohibits the division of farmland into parcels less than 35 acres, had been applied to over half of the prime farmlands in southeastern Wisconsin by the mid-1980's.<sup>29</sup>

The average sale price per acre of land diverted from agricultural use in Racine County was \$3,899 in 1996, increasing to \$6,788 in 1997. The average sale price per acre of land remaining in agricultural use in 1997

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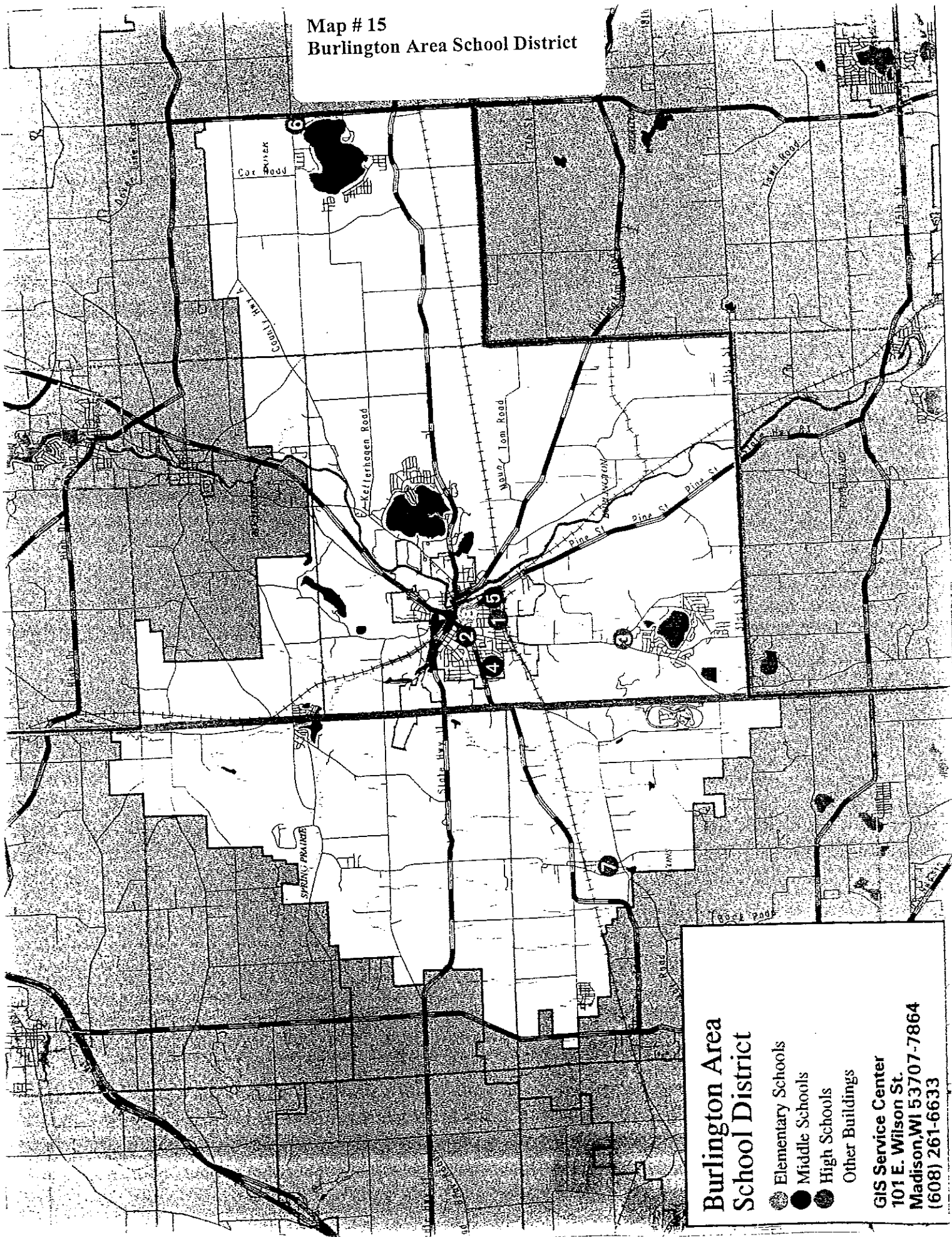
<sup>26</sup> Letter from Burlington Area School District, March 31, 1997.

<sup>27</sup> Burlington Standard Press, Town Board Views Plans for New Winkler School. June 3, 1998).

<sup>28</sup> SEWRPC, *A Farmland Preservation Plan for Racine County Wisconsin*, CAP Report No. 46, (Waukesha, WI: SEWRPC, August 1981).

<sup>29</sup> *Ibid.*

Map # 15  
Burlington Area School District



**Burlington Area  
School District**

- Elementary Schools
- Middle Schools
- High Schools
- Other Buildings

GIS Service Center  
101 E. Wilson St.  
Madison, WI 53707-7864  
(608) 261-6633

was meager in comparison at \$2,365.<sup>30</sup> For the entire state the average sale price per acre of agricultural land being diverted to other uses was \$1,973 in 1997 and the average sale price per acre for land remaining in agricultural use was \$993.<sup>31</sup>

The decline of farm production along with farmland conversion to non-agricultural uses is indicative of the urbanization that is creeping well into Racine County as market demand increases for large-lot residential and single story campus-like commercial and industrial sites that are currently in demand in southeastern Wisconsin.

A report prepared for the Department by SEWRPC shows that agricultural land in the Bohners Lake study area decreased from 1,261.34 acres in 1970 to 1,124.40 acres in 1990. This represents a 10.9% decrease in farmland over this time. Seven-sixths percent of this farmland has been lost since 1980. Significant agricultural uses still occur in the eastern portion of the proposed village. Agricultural use can also be found in areas along the periphery of the proposed village but these areas are currently undergoing platting and development such as land north of Karcher Road. Loss of agricultural land is a trend brought about by decisions made by town and county boards to divert this land to other uses.

#### *Landfill/Waste Disposal Sites*

According to the WDNR there is one landfill or disposal site in the proposed Bohners Lake incorporation territory. The facility is located in Section 17 and owned by the Foster Forbes Glass Company. Within 1.5 miles of the proposed incorporation area (1.5 miles represents the limit of extra-territorial jurisdiction should the petitioned territory become incorporated as a village), there are no landfill or disposal sites listed in the WDNR registry.<sup>32</sup>

#### *Leaking Underground Storage Tanks (LUST's)*

The WDNR lists no known leaking underground storage tanks within the proposed incorporated area.

There are three LUST's within a 1.5 mile radius of the proposed incorporation. Two LUST sites are located in the town of Burlington, and one in the town of Lyons in Walworth County.

#### *Leaking Underground Storage Tanks Within 1.5 Mile of Proposed Village*

- |   |   |
|---|---|
| 1) WisDOT Zubrod Property               | STH 83, S of Yahnke Road                                |
| 2) Spill on Karcher Road                | At Karcher Rd E. of Schaal Rd.                          |
| 3) MGA Research Corp. (Walworth County) | The former Chrysler Corp. Proving Grounds (sold to MGA) |

(LUST site information is from the DNR-Milwaukee office.)

#### Social Customs

Chain O'Lakes (1982) also involved territory around a lakeside community. Again, the territory under consideration was in close proximity to a more metropolitan community—the city of Waupaca (though not falling within the statutory definition of a metropolitan community). The residents of the petitioning territory primarily focused on the larger community for major purchases, while their own retail businesses and services tended to be small due to the great fluctuation in population between summer and winter. However, the critical issue is their existence, not necessarily their size.

<sup>30</sup> Wisconsin Agricultural Statistics Service. Agricultural Land Sales: Total Agricultural Land, Wisconsin 1997. June 1998.

<sup>31</sup> Wisconsin Agricultural Statistics Service. Agricultural Land Sales: Wisconsin 1993-1997, June 1998.

<sup>32</sup> WDNR, Registry of Waste Disposal Sites in Wisconsin, June 1993 update

Within the 1991 Powers Lake Determination, it was held that, "A lake will always be a focal point of public activity. But a lakeshore area may or may not be. If the lake is surrounded by private cottages, it will not be. If one part of a lakeshore has a public park, a marina, restaurants, motels, public buildings, and gift shops and other retail enterprises, then the lakeshore area can easily become the center of community activity."

In Chain, the lakeshore, not the lake itself, was found to function as the community center. Lakeshore territory can be used for commercial establishments, public buildings and parks, and the kinds of land uses that the Legislature envisioned when it set the requirement of a "reasonably developed community center".

Petitioners assert that the focus of community activity here is the lakeshore area. The lakeshore area of Bohners Lake includes one public park, White Oak Park on the north side of the lake, as well as two private parks owned by the Oakwood Hills Property Owners Association and the Oakwood Hills Civic Association. These offer lake access, albeit largely private (the Oakwood Hills parks are prominently posted "members only") to accommodate the recreational and social interaction needs of the 1,970 residents of the proposed village. In reality, because of the size of the proposed village, the Department considers the lakeshore, and the larger area bounded by McHenry Street, and Fish Hatchery Road to constitute the core of the community. There is no absolute requirement that petitioners identify the most populous one-half square mile; rather, the statute merely requires that an isolated village have a minimum area of one-half square mile (s. 66.015 (1), Stats., and then goes on to apply a separate test for the territory lying beyond the most densely populated one-half square mile (s. 66.016 (1) (b), Stats., this criterion will be reviewed later).

In some past determinations, social activities centered around the churches found in the proposed villages were specifically noted as evidence of a sense of community identity (Hewitt, 1973; Newburg 1973). In other determinations (Rockfield, 1964), failure to have a continuously operating church was found to suggest that social activities took place elsewhere. Fitchburg (1982), although involving an incorporation petition of an entire township, specifically noted the importance of schools and churches in social customs: "Schools and churches are often a major focal point of social activities for families. There are no schools and only three churches in Fitchburg. This means these social and cultural ties lie primarily outside the Town. The importance of year round social and cultural ties associated with schools and churches outweigh such annual social events such as the Corn Roast, 4th of July Picnic and Firemen's Dance" (Fitchburg, pg. 4).

The territory proposed for incorporation lies within one school district (Map 15, on page 39), the Burlington school district, and Winkler elementary school is located within the proposed village. This tends to foster continuity and a common identity among the students and parents within the proposed village with regard to educational services (and the social activities which follow from them). Winkler elementary has an active Parent-Teacher Organization (PTO) made up of parents of children who are from the area proposed for incorporation. According to testimony given at the public hearing, the PTO raises funds to support school activities. The playground has new equipment donated by the PTO. According to Linda Luger, the principal of Winkler school, the school facilities are used for PTO meetings and events and for scout meetings after school. Luger also indicated to the Department that the new Winkler school would be open within a year and that she anticipated that there would be more community use of the facility when it opened (Phone conversation with Linda Luger, January, 1999). Gary Olsen, Buildings and Grounds Supervisor for the Burlington School District, stated that the new facility will contain 16 classrooms, a 900 square foot library and a 400 square foot workroom, as well as a cafeteria/multipurpose room with an assigned capacity of 185 people, a gymnasium with an assigned capacity of 300 people and an outdoor playground (gym is 65ft x 48ft, cafeteria 50ft x 37ft, classrooms have assigned capacity of 30 occupants)

The Burlington School District elementary school boundaries are likely to change with the addition of the new Winkler school. The new facility will double the capacity of Winkler school. The Burlington school district reports that the additional space at Winkler will likely be filled with students currently residing and

attending school in the city of Burlington and other parts of the school district<sup>33</sup>. "Although schools are an important determinant in molding community allegiance through scholastic, social, and recreational activities, the determination of their boundaries is entirely separate from the process of municipal governance...For that reason, school district boundaries are still considered to be neutral with respect to municipal incorporation" (Pewaukee, 1991).

The New Covenant Baptist Church, located within the proposed village, is alleged by the petitioners to sponsor several community-wide activities. These include a Wednesday night youth group involving approximately 30-40 children, a vacation bible school involving approximately 100 children, and various small bible study groups (hearing testimony presented by the petitioners.)

In addition to the above mentioned school and church related activities, several other social organizations and community events are offered by the petitioners as evidence of a community-wide identity. The petitioners refer to the Bohners Lake Preservation Council, Inc., formed for the purposes of promoting the incorporation of the area. The petitioners have noted various fund raising activities that the group has engaged in. The town of Burlington argues that this group has no other purpose besides the attempt to incorporate, has no history in the community, and has not been established as having any community-wide attraction.<sup>34</sup>

Concern over environmental degradation in this area resulted in the formation of a volunteer organization, The Bohners Lake Improvement Association, dedicated to the protection and sound management of Bohners Lake (Hearing Exhibit 16). Funds are raised to support these activities through the volunteer efforts of groups such as the Ladies of the Lake. According to testimony of the petitioners, this group makes and sells crafts to support the Lake Improvement Association. The membership of the group consists of approximately 20 people, two of whom are from the city of Burlington. In its brief in opposition to the incorporation petition the town of Burlington asserted that the petitioners had failed to establish the current membership of the Bohners Lake Improvement Association, attendance at its meetings, or any other indication that the Association had community-wide appeal or impact.<sup>35</sup>

The petitioners also provided testimony regarding the existence of several annual events, fundraisers, and other activities; such as an annual community festival held at Rich's White Oaks Restaurant, a Fourth of July Venetian boat parade, and a pig roast held to raise funds to support the volunteer fire department.

The town of Burlington asserts that the proposed village lacks a strong core of volunteers. The town uses the current composition of the town's volunteer fire department to argue that the proposed village has an insufficient base of potential volunteers to adequately staff a volunteer fire department if incorporated, and to argue that this demonstrates a lack of community identity and common social customs.<sup>36</sup>

#### Community Center

The pattern of development in the Bohners Lake area has been along the lake shore, rather than from some other focus, such as a nucleus commercial center located at a confluence of highways. Section 66.016 (1) (a), Stats., requires 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." Lake shore communities often first develop with seasonal homes surrounding the lake, as a dominant land use, and because the seasonality of spending for "daily needs" is insufficient to support a business/commercial core in proportion to the number of residential dwelling units.

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<sup>33</sup> Journal Times, Burlington Schools Consider Boundary Revisions, January 12, 1999.

<sup>34</sup> *Intervenors, Brief in opposition to incorporation*, February 24, 1997, pp. 3-4.

<sup>35</sup> *Ibid*, p. 3.

<sup>36</sup> *Ibid*, p. 4; letter from Ross Marshall to the Department, dated January 24, 1997.

The commercial center can be small, as noted in Chain O'Lakes, but it must be present and viable, and be able to meet the day-to-day needs of the majority of the residents in an isolated (non-metro) community.

In Stone Bank (1995), the department concluded that the minimum requirements of homogeneity and compactness were met, because of the presence of two active churches which draw a substantial proportion of their members from Stone Bank, year-around civic organizations, and the unifying presence of the Stone Bank School, parks and recreation facilities, and the ability for residents, if they choose, to satisfy daily needs within the stone bank core area ..." (Stone Bank, p. 51)

Both of these past determinations involved lakeshore /recreational communities very near larger cities, and both communities were able to develop and maintain a core of businesses and organizations which could meet the daily needs of their residents. It was not considered surprising or detrimental that major shopping excursions were focused on the larger community nearby (Waupaca for Chain-O-Lakes, and Waukesha, Oconomowoc, and other nearby cities adjacent to Stone Bank). This would no doubt be true, to varying degrees, for every village. However, Bohners Lake meets the requirement, stated in Stone Bank, that the area have shopping opportunities, "which can satisfy the daily needs of its residents despite the close proximity of nearby shopping establishments." (Stone Bank, pg. 40)

All past isolated areas that met the standards for homogeneity/compactness and community center, included a village center area which contained most or all of the following: Post Office, school, bank, church(es), commercial establishments, including grocery stores, restaurants, gasoline service stations. These establishments, along with professional services, appeared to be the most critical in terms of whether a real community center existed in the area. If all of the establishments were not specifically listed in the determination as present in the community center, the determination indicated that the "community itself is sufficiently developed to supply daily necessities" (Oakdale, 1986), and serve as a locus of community activities.

Past determinations involving petitions for isolated village which failed to meet the incorporation standards have generally failed on homogeneity and compactness (Francis Creek, 1960; Cushing, 1961; Sherwood, 1968; Plover, 1971; Delavan Lake, 1989, Powers Lake, 1991). Powers Lake and Delavan Lake specifically failed to have a reasonably developed community center. In both of these cases, the Department found that the "community center" lacked the types of goods and services generally used on a day-to-day basis. Furthermore, these communities were found to lack churches, schools, telecommunications exchange, and similar centers of community activity.

It was noted that Delavan Lake also lacked grocery stores, a post office, professional offices, or department stores (of any type). Again, it was the failure to provide day-to-day needs and a focus of community-wide activity that was considered determinative (Delavan Lake, p. 24).

In contrast, many of these facilities are present in the Bohners Lake area, albeit in admittedly rudimentary form. Residents are able to supply their immediate needs at the grocery stores, gas station, auto body shop, restaurants, and taverns. The church, and school are also available community resources. A telephone exchange building is maintained within the proposed village (although its use appears to be limited to payment of bills and storage). The petitioners submitted a list of 46 businesses alleged to be operating in the area proposed for incorporation (Hearing Exhibit 14). The petitioners also noted that material prepared by the Chamber of Commerce for the city of Burlington identifies Bohners Lake as a separate area (Hearing Exhibit 10). In contrast, a report prepared for the town of Burlington by Camiros, Inc., a planning consultant, identified only 28 businesses (see Map 14 on page 33, and Hearing Exhibit C, pp. 7-8). An inspection by Department staff showed that businesses were dispersed throughout the area and that many were home-based businesses, which are unsigned or poorly identified and difficult to locate. These are

predominantly a mixture of various service-based businesses. However, there appears to be a minimal base of economically viable businesses in the area. In addition, the proposed village of Bohners Lake contains several public and private parks and boat launches which offer lake access and recreational opportunities for the residents of the proposed village.

The petitioner's claims are countered by the Town of Burlington, which argued that there is not a core concentration of businesses which meet the daily needs of Bohners Lake residents. They assert that the only concentration of businesses, at the intersection of CTH "P" and Fish Hatchery Road, contains a boat storage business, a golf shop, an empty office building, and a restaurant (Hearing Exhibit C, pg. 10). Only the restaurant, the town asserts, is the type of business usually found in a community center. The town offered testimony at the public hearing from residents who stated that they met their shopping, social and recreational needs in the city of Burlington or elsewhere outside the proposed village. The town argued, for example, that the Beachview Grocery Store was on the opposite side of the lake from the majority of residential uses, isolated from other businesses, more expensive than alternative options, and that it was used only for emergency and last minute needs.

## **DETERMINATION**

### Natural Boundaries, Natural Drainage Basins, Soil Conditions

As previously described and analyzed, the boundaries selected for this incorporation petition largely correspond with many of the ecological and physical attributes of the area. The intervenors asserted that physical homogeneity was not met since the boundaries of the proposed village included the Fox River, the White River and the Spring Brook watersheds. However no specific physical burdens on these sub-watersheds or their ecology were identified by the intervenors as a consequence of the proposed incorporation. The petitioner's responded by noting at the public hearing that the boundary line is as nearly fitted to the watershed divide as is practical without including excess agricultural land or creating isolated town islands. In addition, both the White River and Spring Brook are sub-watersheds which empty into the Fox River. The Department determines that this criterion is met because the petitioner's boundary fairly encompasses the areas of developable soils, drainage sub-basins, and substantial ecological features contributing to the character and integrity of Bohners Lake.

### Transportation Facilities

The current pattern of local streets within the proposed area adequately meets the needs of the territory, and provides identity. CTH P, Fish Hatchery Road, Bohner Drive, and Fishhatchery Road bracket the proposed village area. They serve to connect neighborhood streets and make all of the properties within the proposed territory accessible by automobile. CTH "P" provides a direct route to the city of Burlington and other transportation facilities outside of the proposed village provide quick commuter access to Milwaukee, as well as Racine, Kenosha, Chicago and Walworth County. For these reasons, this criterion is met.

### Previous Political Boundaries

The proposed village contains the boundaries of the Bohners Lake Sanitary District. The boundaries of the proposed village respect existing political boundaries formed by the confluence of Racine, Kenosha and Walworth Counties and associated town boundaries. The territory is entirely contained within the town of Burlington and follows natural features where possible, and defaults to county, township and section lines to avoid creating any town islands. Therefore, the need for the petition to consider homogeneity and compactness in this proposed political boundary versus previous political boundaries is considered to be met.

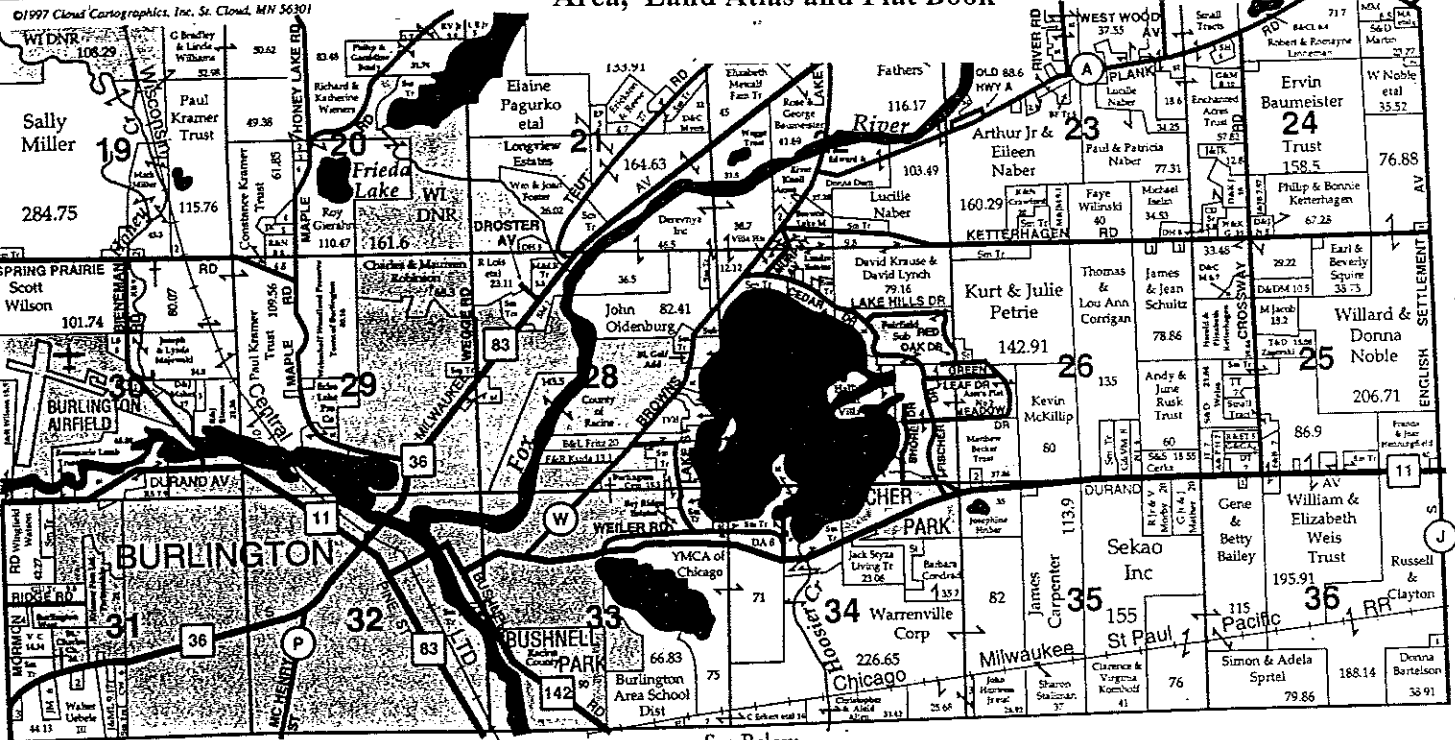
Should incorporation occur, the Department recommends that either the proposed village, or the city of Burlington annex the 83.29 acre parcel located in the South ½ of the Southwest 1/4 of Section 7, Range 19 East, Town 2 North (see Map 16, page 45). The area, the southerly extension of the Bohners Lake Woods,

# BURLINGTON (N)

## Map # 16 Plat Book Map of Burlington Area, Land Atlas and Plat Book

### T.3N. - R.19E.

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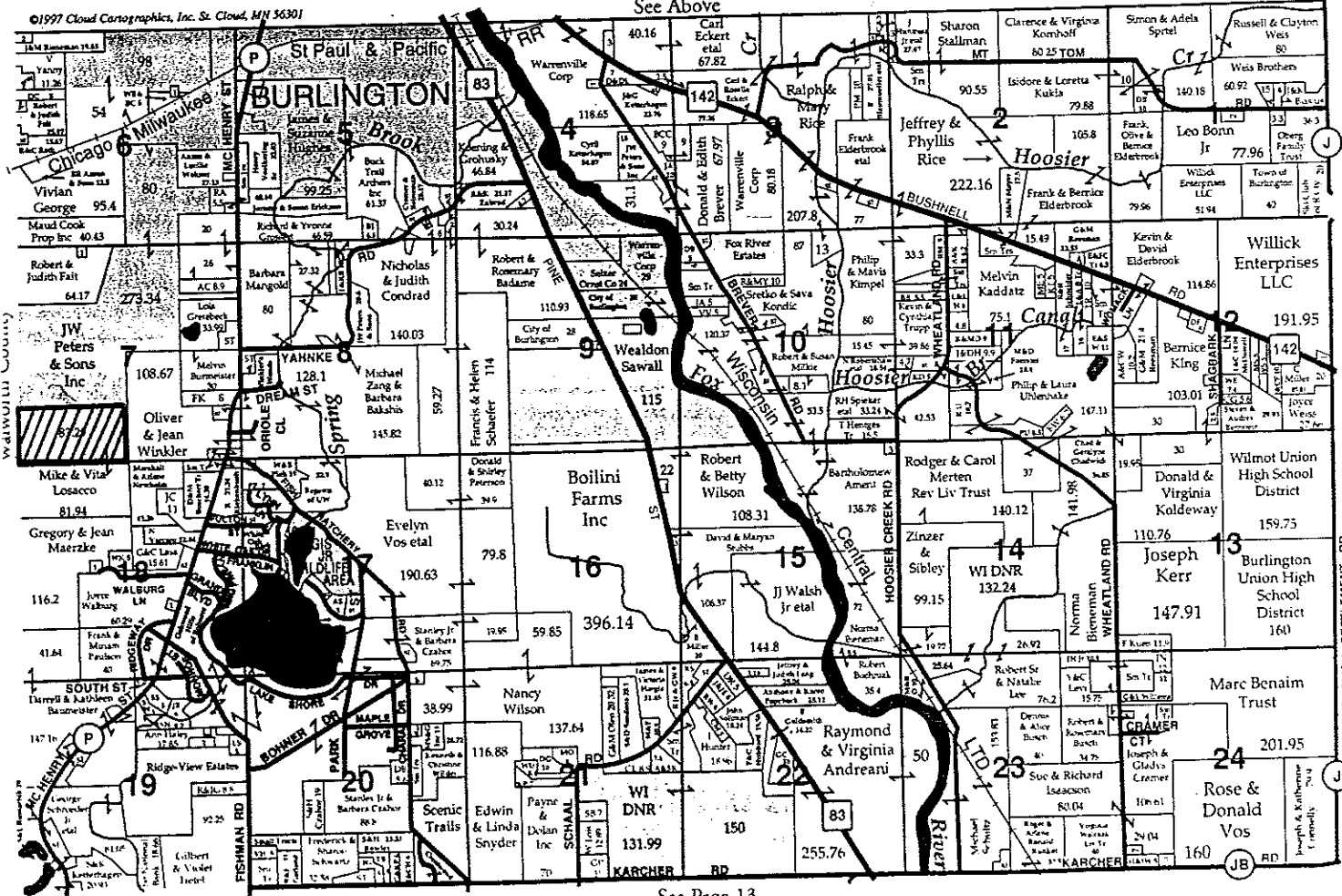
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See Page 48

# BURLINGTON (S)

### T.2N. - R.19E.

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See Page 13

See Page 14

designated a primary environmental corridor by the SEWRPC, primarily consists of forest and wetland, steep slopes, agricultural/open space, and a small area comprising residential development. The area is not a true "town island" because it is not entirely surrounded by a single jurisdiction.

#### Boundaries of School Districts

In past determinations, the Department has stated that "boundaries of school districts are unaffected and therefore neutral with respect to the consolidation of the village and town." Although schools are an important determinant in molding community allegiance through scholastic, social, and recreational activities (topics which are treated in the 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.

#### Shopping and Social Customs/Community Center

The statute and past determinations give no indication that recreational communities are to be treated any differently from communities with a formative history based on retail-commercial activity. The only existing statutory distinction is between "isolated village" and "metropolitan-area" petitions. Each petition must meet the same basic requirements--the size of the establishments can be considered, however, to allow for seasonal fluctuations. The language and intent of s. 66.016 (1)(a), Wis. Stats, points to a need for flexibility from the department and consideration of individual circumstances, however, flexibility has limits and basic necessities cannot be waived. That the existing handful of businesses are stable and thriving is significant. So far as the Department can ascertain, businesses are not being converted to residential dwellings, as is occurring in neighboring lake district communities. The relocation of the school to the more central location actually promotes concentration of the various factors that promote successful retail trade activity, whereas its' previous location contributed to a lack of inter-relationships. Taken together, the Department believes, as in the similar case of Stone Bank, that the church, school, telephone exchange, restaurant, ball diamond, and other businesses and amenities minimally meet the statutory term "reasonably developed community center,..." (Section 66.016 (1) (a), Stats. And in addition, but separate from the issue of whether the "community center" first minimally complies with statutory intent, the Department, in its experience and judgement, believes that "reasonably" can also be construed to include such considerations as: The stability of the land use in question; the direction and intensity of land use trends, which in this case include the foreseeable increased access to Bohners Lake because of the STH "11-36-83" bypass and the intended interchange with CTH "P;" the installation of public sewers in Bohners Lake, and the nearly order-of-magnitude increase in home building activity that is directly attributable to the installation of these public sewers.

Therefore, when taking into consideration the specific facts of the instant case, and the criteria set forth in s. 66.016 (1)(a), Wis. Stats., the Department believes that this standard is met.

## 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. Stat. sec. 66.016(1)(b))

### ANALYSIS

This standard is a single standard comprised of two parts. The first part 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."

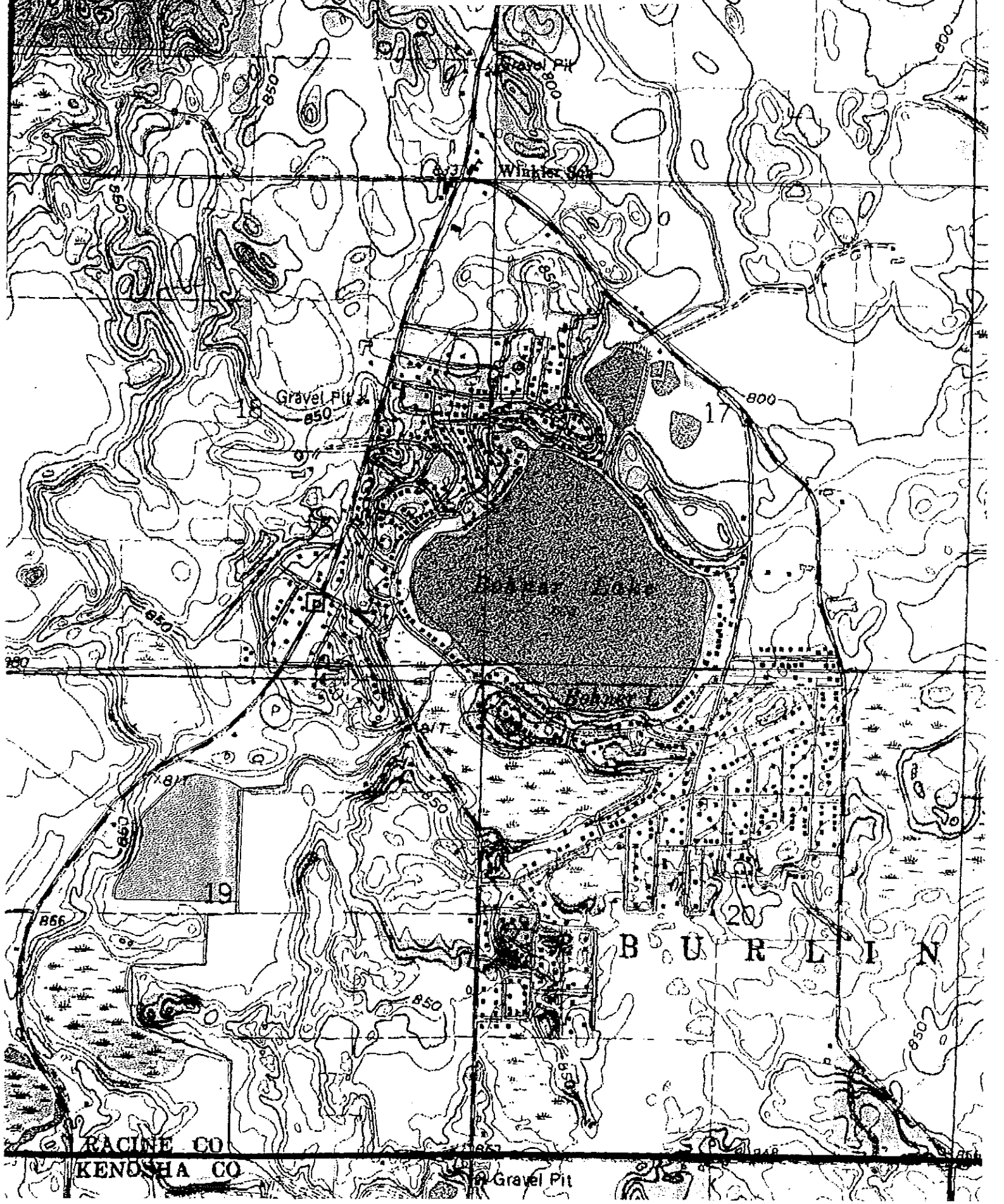
The second part of section (1)(b) pertains to "metropolitan" villages or cities which does not apply in the instant action.

The town of Burlington argues that the burden to establish this element is on the petitioners. They state that the petitioners have not met this burden because they have not adequately identified the most densely populated ½ square mile, and that they have not established that the area beyond this ½ square mile meets the requirements for density or potential for development under s. 66.016 1(b), Stats., (Brief in Opposition to Incorporation, February 24, 1997, p. 6).

In a letter brief to the department, the petitioners argue that section (1) (b) requirements for developable lands should be waived because environmental corridors, wetlands, and muck soils present in the remaining undeveloped portions of the proposed area make the remaining land largely undevelopable. The petitioners rely on the last paragraph of s. 66.016(1)(b), Stats., which provides a waiver, "to the extent that water, terrain, or geography prevents such development", in arguing that that the density and development requirements should not apply.

Remaining developable acreage of any size in the Bohners Lake area that is associated with contiguous soil types, capable of urban development without needing significant amounts of preliminary site preparation, is located primarily in the South 1/2 of Section 20 and on selected tracts lying west of CTH "P" (with the exceptions due either to the presence of Houghton muck, or Casco-Rodman soils lying on slopes of 20-35%, etc.). Although the area of Bohners Lake may appear to be extensively rural in character, the lack of development can also be attributed to the extensive presence of muck soils associated with a high water table, or hills with steep slopes comprised of soils highly susceptible to erosion. For example, a large majority of Sections 17 and 19, trending diagonally northeast-southwest, contain the inlet and outlet of Bohners Lake, and with the exception of the lake shore, are undevelopable, including the Southwest 1/4 of Section 8. In a number of specific instances, the Department found that SEWRPC and the intervenors over-estimated the amount of developable land by quarter-section actually present within the petitioned territory. Map 17, page 48, when analyzed in conjunction with the soils information previously found on Maps 7 and 8, ppg 17 & 18, and coupled with the aforementioned building permit data, a very different picture emerges.

Map # 17  
Topographic Map



In response to the issue raised by the intervenors of the petitioner's failure to identify the most densely populated ½ square mile, and the need to identify the number of dwelling units per quarter-section, the Department asked the SEWRPC to prepare a quarter-section population/dwelling unit/developable-acre analysis. This table (Appendix 6) was prepared based on 1990 census data. As a worst-case scenario, the Department subtracted out the two quarter-sections containing the greatest number of dwelling units at that time (quarters #219184 and 219202, comprising a total of 367 dwelling units), and averaged the remaining 568 dwelling units over the remaining 16 quarter sections, resulting in 35.5 dwelling units per quarter section, including numerous quarter-sections comprised of water and otherwise undevelopable due to high water table, slope, or otherwise unstable soils.

#### **DETERMINATION**

Therefore, considering the application of the statutory term "average" to mean average of total dwelling units across all relevant quarter-sections excluding the most densely populated one-half-square mile, and given the statutory authority to the Department to "waive these requirements to the extent that water, terrain, or geography prevents such development." (s. 66.016 (1) (b), Stats., the Department determines that this 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." (Section 66.016(2)(a), Stats.)

#### **ANALYSIS**

##### Prospective services to be provided by the petitioners

Petitioners contacted various agencies and professionals for the possible provision of public works and law enforcement services. As discussed during the Department's hearing and exhibits, and restated in the following section on municipal budgets, the proposed village anticipates providing basic services at least equal to those which are currently provided by the town.

General government activities projected by the petitioners appear to be based on comparable activities and costs incurred by surrounding municipalities. One possible omission is for the preparation of a comprehensive land use plan and implementing code of ordinances. For example, should incorporation be approved by a referendum election, writing and approving a comprehensive land use plan, and implementing zoning ordinance and map could be a high priority if the proposed village desired to regulate the various land use types now regulated by the Racine County Code of Ordinances. Subsequent land use decisions could then become the responsibility of the newly elected village board, and accurately reflect the taste and preferences of the residents (yet within the confines of existing statutory requirements). And, as previously noted, an ordinance assuring continued oversight of lake-oriented recreational activities would need to be prepared. These activities could possibly be covered in the legal fees allocation, but that is not clearly stated in the petitioner's proposal, nor is the amount deemed to be sufficient, for example, if the amount also includes the cost of operating a municipal court, should the proposed village elect to create one.

Analysis of petitioner's budget

This section reviews comparative levels of revenues, expenditures and tax rates found in the proposed budgets of the petitioners and intervenors, and the town of Burlington. One of the analytical problems encountered during budget review is the difficulty of assessing the impact of changing administrative policies and priorities which naturally occur, while simultaneously accounting for the costs involved in setting up a new government, or adjusting for the effects of changing services (some of which may be provided by others), population, and tax base. The following sections briefly examine the municipal financial picture as characterized by the petitioners, and the intervenors for the proposed village of Bohners Lake, and the town of Burlington.

The following Table 4, portrays the 1996 municipal budget for the proposed village of Bohners Lake. Line item expenditures and revenues from the petitioner's and intervenors' proposed budgets were recategorized by the Department to make them relatively consistent and therefore comparable. All presentations generally follow the format used in the state chart of accounts for municipalities. The three columns represent first the petitioner's budget option number 1 which is part of Exhibit 1 provided to the Department during the legislative hearing conducted on January 29th, 1997. Column two portrays a slight recategorization of the intervenor's budget found in Exhibit B "Fiscal Impact Analysis of Proposed Incorporation of the Bohners Lake Area." Column three represents adjustments by the Department that incorporate revisions to expenditures and revenues based on public information found in various Wisconsin Department of Revenue publications.

*Assumptions and Considerations*

The Department's adjusted budget estimates assume that the current service level delivered to citizens in the proposed area of incorporation stays constant. The Department did consider the possible impact of "economies of scale" before making budget estimates. Furthermore, all costs are annualized from a base year of 1996.

As shown in Table 4, the adjusted budget includes solid waste and recycling service. It is assumed that the village will contract for service, and if so, solid waste collection can then be billed separately as a special charge to residents instead of being included on the tax roll to be paid for by everyone. However, its inclusion or exclusion makes no significant difference for the analysis, because fees typically collected are equal to pickup and disposal costs.

Startup costs are not directly addressed in the budget analysis. However, the required assets distribution from the town of Burlington to the proposed village would likely cover some startup costs. See Table 5, page 59 for the town of Burlington's estimated assets. Startup costs are problematic, because usually a small number of employees or volunteers may handle many tasks until various activities and level of service needs are established and become stable.

Table 4

Analysis of Budgets

<b>Expenditures</b>	<b>Petitioner's Budget Option 1</b>	<b>Intervenor's Budget</b>	<b>Adjusted Budget</b>
<i>General Government</i>			
Governing Body	\$3000	\$28,850	\$9000
Clerk-Treasurer	30,000	24,800	27,000

Clerical	5000	-	0
Legal	20,000	13,000	18,000
Custodial	-	-	0
Elections	1,000	2,600	1,500
Assessor	6,000	4,850	5,000
Building Inspection	3,000	9,150	9000
Supplies	6,000	5,450	6,000
Utilities	1,500	4,900	4,900
Rent	8,000	-	12,000
Insurance	15,000	20,750	19,600
Auditing/Accounting	2,000	6,000	5,000
Data Processing	-	-	0
Board of Review	-	-	0
Planning and Zoning	5,000	3,450	3,500
Board of Adjustment	-	-	0
Other	-	17,500	8,350
<b>Subtotal</b>	<b>105,500</b>	<b>145,600</b>	<b>128,850</b>

*Public Safety*

Police	80,000	190,450	175,000
Municipal Court(excl. prosecuting - Attorney)	-	6,450	6,500
Procecuting Attorney Fees	-	3,800	3,800
Water Patrol	-	20,300	20,300
Animal Control	-	-	0
Fire	60,000	62,150	60,000
Ambulance	-	-	0
Other	-	-	0
<b>Subtotal</b>	<b>140,000</b>	<b>283,150</b>	<b>265,600</b>

*Highways*

Highway – General	160,000	112,300	112,000
Street Lighting	-	4,300	4,300
Bridge Inspection	-	-	0
Other	-	81,800	81,800
<b>Subtotal</b>	<b>160,000</b>	<b>198,000</b>	<b>198,100</b>

b

<i>Solid Waste, Recycling</i>	-	95,650	95,650*
Public Health	-	8,350	7,100
<i>Library</i>	-	-	0
<i>Parks and Recreation</i>	1000	-	0
<i>Capital Outlay</i>	15,000	-	0

Total	417,150	731,150	695,300
Total (excl. Solid waste)	421,500	635,500	599,650

<b>Revenues</b>	Petitioner's Budget Option 1	Intervenor's Budget	Adjusted Budget
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*Intergovernmental*

State Shared Revenues	105,000	79,000	79,000	
State Aid Police Training	-	500	500	
State Aid Recycling	8,050*	8,050	8,050	
Highway Aids	36,000	46,550	46,550	a
State Aid Fire Insurance Dues	3,000	2,950	3,000	
State Aid Water Patrol	-	6,000	6,000	
Other	-	5,900	5,900	
<b>Subtotal</b>	<b>152,050</b>	<b>148,950</b>	<b>149,000</b>	
<i>Licenses &amp; Permits</i>	6,500	15,700	15,700	
<i>Fines &amp; Forfeitures</i>	-	10,550	10,550	
<i>Public Charges for Services</i>	2,000	1,750	2,000	
Solid Waste	95,650*	95,650	95,650	
Other	0	0	0	
<b>Subtotal</b>	<b>256,200</b>	<b>272,600</b>	<b>272,900</b>	
<i>Interest</i>	0	0	0	
<i>Other Revenues</i>	0	0	0	
<b>Subtotal</b>	<b>0</b>	<b>0</b>	<b>0</b>	
<b>Total Revenues</b>	<b>256,200</b>	<b>272,600</b>	<b>272,900</b>	
(Excl. solid waste)	152,500	168,900	169,200	
Amount to be raised by local tax levy	260,950	458,550	422,400	
(excluding solid waste)	269,000	466,600	430,450	
Estimated equalized value	87,412,000	87,412,000	87,412,000	
Estimated local mill rate	0.00298529	0.00524585	0.00483229	
(excluding solid waste)	0.00307738	0.00533794	0.00492438	

**Notes:**

a. First year transportation aids would likely be zero, because aids are based on eligible expenditures. No municipality can receive aid equal to more than 85% of averaged 3-year expenditures.

b. \$81,700 equals a yearly payment at 5% interest over 10 years. The sanitary district will pay for sewer installation related road repair cost of \$631,700, as estimated by the intervenors.

General comments: Petitioner's budget (contained in Hearing Exhibit 1) represents expenditure and revenue amounts they believe are necessary in order to operate a part-time village-style government. These amounts are based on the experiences of other villages and interviews with organizations, such as Racine County, which are capable of providing services to the proposed village.

Intervenors contend that proposed general government per capita expenditures are quite low when compared to expenditures found on page 10 of Exhibit B, their "Fiscal Impact Analysis of Proposed Incorporation of the Bohners Lake Area", prepared by Camiros (January, 1997).

There are large differences among the petitioner's and intervenors' budgets for the proposed village. Usually the Department's adjusted budget estimate lies somewhere between the petitioner's and intervenors' budget estimates.

## **Expenditures**

### *General Government*

#### **Governing Body**

The intervenors' estimate assumes high payments to village board members relative to similar communities. The petitioner's budget assumes unreasonably low costs. The Department is confident the adjusted payment could offer a governing body of similar quality as enjoyed by current town of Burlington residents. Few, if any, people base their decision to run for local political office on the amount of compensation offered by the position.

#### **Clerk Treasurer**

A wage of \$24,000 to \$30,000 will fund a clerk/treasurer.

#### **Clerical**

During the near term, the clerk/treasurer can perform needed clerical duties. Therefore, no cost is incurred in this category.

#### **Legal**

The Department estimates a cost of \$18,000 based on known levels of expenditure in other municipalities of similar size. If activities (preparation of a land use plan and accompanying ordinances) previously discussed are initiated, this amount could easily double.

#### **Custodial**

The petitioners rent expenditure to physically house the government may include custodial services. Therefore, no separate cost is entered.

#### **Elections**

It is assumed that the town of Burlington will give up the appropriate voting machines as an asset distribution. The estimate of the remaining administrative costs is \$1,500.

#### **Assessor**

Cost estimate is \$5,000 per year.

#### **Building Inspection**

\$9,000 will provide a well-equipped building inspection service, which in many communities is actually self-funding.

#### **Supplies**

This cost is mainly for office supplies.

## Utilities

Some of this cost will be captured in rent paid. (See the following line)

## Rent

Custodial and some utility costs for the administration building may be included here.

## Insurance

\$19,600 assumes the same per capita cost presently incurred by the town of Burlington.

## Auditing/Accounting

Professional fees of \$5,000 may cover the cost of accounting services.

## Planning and Zoning

An expenditure of \$3,500 will likely cover commission members per meeting allotments, and little or no professional consulting. This amount does not cover the cost of preparing or administering a comprehensive plan and related implementing ordinances.

## Other

The intervenors have a number of expenditures under general government that do not fit into any of the preceding categories and hence, fell into this category. These line items are: contributions, contingency #1, coordinator, contingency #2, roof company #2, roof company #3, general town, major repairs, tank removal, highway shop lights, and highway shop paint.

The Department considered many of these items not well defined or inapplicable. The following line items are removed for the adjusted budget: contributions, tank repairs, roof company #2, roof company #3, heating, coordinator, highway shop lights, highway shop paint, and humane society. The remaining items are left in the budget as general government expenditures. The highway-related items should be taken care of by a director of public works or engineering department.

## *Public Safety*

### Police

A statewide review by the Department found that annual law enforcement budgets range from \$4,100 to \$377,500 in villages with a population similar to the proposed Bohners Lake. Clearly, this wide range suggests law enforcement budgets are dependent upon factors other than population. Local factors and preferences are variables which greatly impact law enforcement budgets. The call summary report provided by the town of Burlington police shows the percentage of the town's calls/complaints taken from the Bohners Lake area. The Department considers this a proxy of the percentage of the town of Burlington's police budget demanded by Bohners Lake area residents. The call summary shows that Bohners Lake residents accounted for 37% of the police calls in 1996. This corresponds to a budget of about \$175,000 per year to service the Bohners Lake area. The Petitioners have entered into discussions with the Racine County Sheriff's Department to provide police protection and Water Patrol services within the proposed village. Initial estimates are that the village would pay approximately \$63,000 per officer, including vehicle and operating costs.<sup>37</sup>

### Municipal Court

Villages are not required to set up a municipal court. Because the town of Burlington provides court service, this analysis assumes the proposed village may likely continue this activity, particularly as it would enable the village to directly enforce its own ordinances. The cost estimate is \$6,500.

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<sup>37</sup> Letter from William McReynolds, Racine County Sheriff, February 7, 1997.

Prosecuting Attorney Fees

This cost is related to the municipal court and is estimated to be \$3,800. This may be low, as typically professional services are provided on retainer, and this may be too low to attract attention.

Water Patrol

The cost to patrol Bohners Lake is \$20,300. Much of this cost is financed by state aid.

Animal Control

Not provided.

Fire

Volunteer fire service will cost approximately \$60,000. This is one of the major expenditure items where both the intervenor and petitioner estimated nearly identical costs. This estimate assumes that fire station #2 will be transferred to the proposed village and the expenses of maintaining a full time fire chief and a volunteer fire staff. Racine County has an established county wide mutual aid agreement for existing fire and rescue services within the county<sup>38</sup>. In addition, the Town of Burlington fire department, the City of Burlington fire department, and many of the other Racine County fire and rescue services have mutual aid agreements with adjacent fire and rescue services in adjacent counties.<sup>39</sup> It is unclear whether the petitioners will attempt to form their own volunteer fire service, enter a mutual aid agreement or joint service agreement with a neighboring fire department, or contract for fire service. Town of Burlington fire chief, Randy Larsen, expressed concern to the Department about the age of the fire equipment and the adequacy of the water supply available to Station #2 and noted that this might affect the insurance ratings of the area homeowners.<sup>40</sup> Another concern, which the Department shares, is whether a sufficient volunteer base exists within the proposed village that would enable a volunteer department to be constituted. This is a question that the Department is unable to conclusively address at this time.

A solution for this issue may not be known until sometime following a favorable referendum election. In Wisconsin, volunteer fire service is often the subject of considerable community loyalty, pride, and enthusiasm. This is one question to which the Department has been unable to obtain concrete answers to its' questions. Once referendum results are known, it may be easier for the fire chiefs and elected officials to politically enter into a discussion as to how best to provide service to the area. In and of itself, uncertainty in this area is not a sufficient reason for the Department to deny an incorporation petition. A worst-case scenario might involve a paid-on-call department, or other fee-for-service arrangements. Concerns by the intervenors about adequacy and age of equipment and adequacy of water supply apply with equal weight to the current situation, as well as they might to any future village.

Ambulance

The town of Burlington provides no funds for an ambulance service. We assume the proposed village will not either. Emergency medical services are provided by the Burlington Area Rescue Squad, which is a private organization supported by the local Rotary. It has volunteers that cover the city of Burlington, Town of Burlington, and sections of the towns of Dover and Spring Prairie.

Other

\$0

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<sup>38</sup> SEWRPC, *Inventory of Fire Protection and Emergency Medical Services for Western Racine County*, Memorandum Report No. 129 (Waukesha, WI: SEWRPC, December 1998)..

<sup>39</sup> *Ibid*, p. 10.

<sup>40</sup> Letter from Randy Larsen, Town of Burlington Fire Chief, February 14, 1999.

### *Highways*

#### Highway - General

The Bohners Lake highway budget was determined from the town of Burlington's highway budget to be proportional to road miles in the Bohners Lake area. The budget estimate is \$112,000.

#### Street Lighting

Based on road miles, a comparable service as presently offered by the Town will cost residents in the Bohners Lake area \$4,300.

#### Bridge Inspection

\$0 Not in the intervenors' or petitioner's budgets. Not presently provided by the town of Burlington.

#### Other

\$631,700, which at 5% interest is \$81,800 per year for 10 years. See the following section "capital projects" for more information.

#### Solid Waste, Recycling

This cost estimate is \$95,650. This estimate comes almost directly from the town of Burlington. Fees charged for solid waste and recycling equal the cost of pickup and disposal. Consequently, inclusion or exclusion of solid waste pickup and disposal as a local government cost should not have a significant bearing on the proposed village of Bohners Lake's finances.

#### Public Health

The town of Burlington spent \$3.62 per capita on public health. An equal level for the proposed village results in a \$7,100 expenditure.

#### Library

No library is maintained by the town. The proposed village is assumed not to have a library. Library service is normally included in the county property tax levy if residents of the jurisdiction are not contributing a minimum amount to their own library.

#### Parks and Recreation

The town of Burlington's park and recreation budget is \$0. We assume the proposed village will spend the same, continuing to rely on the homeowners associations to maintain the beach-front parks. <sup>41</sup>

#### Capital Outlay

Is assumed to be \$0.

### **Revenues**

#### *Intergovernmental*

#### Shared Revenue Aid

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<sup>41</sup> The village will at some point need to face the issue of providing outlying subdivision residents adequate access to the lake and related recreational facilities, and may want to consider initially hiring a summer recreation director, if for no other reason than to coordinate the planning and use of the existing public and private (home-owner association) facilities. This transition could be viewed as a necessary component of the decision to move from a private residential association/town form of service, to a comprehensive village service – otherwise, why incorporate if home-rule powers are not to be utilized for the benefit of the entire population?

The Department's estimate of the 1996 payment to the proposed village is \$79,000, as the intervenors estimated. The Wisconsin Department of Revenue estimates that this figure will be significantly lower than \$79,000 in 1997, because the "aidable revenues" portion will drop to zero.

#### State Fire Insurance Dues

Rounded to the nearest one-hundred, the intervenor's and petitioner's estimates are both \$3,000. The Department concurs.

#### State Police Training Aid

We accept the intervenors' estimate of \$500.

#### State Water Patrol Aid

This aid will be at least \$6,000.

#### State Recycling Aid

We accept the intervenor's estimate of \$8,050.

#### State Highway Aid

The significant change is zero highway aids the first year. Highway aids are paid on the basis of eligible average costs incurred over 3-year, and 6-year periods. Two years are required before eligible costs can be fully considered, as the state pays \$1,432 per mile or 20.85% of actual costs, whichever amount is greater. However, no municipality can receive more than 85% of average 3-year costs. Thus, costs incurred during the first year of incorporation would be eligible for aid following year two, subject to the 85 percent cap. This would likely mean that unless Bohners Lake were to spend more than the state average per mile, it would receive less than a \$1,432 per mile base aid payment. It is worth noting that the proposed village would not receive highway aids for the first year after incorporation, but over the "life" of the village this would not be significant impact.

But, even though a new village would not be given highway aids the first year of its existence, it would have claim to a portion of the town of Burlington's highway aids for that year, as part of the initial asset transfer. For example, in 1996, the town of Burlington received \$2,216 per mile in highway aids. If we assume the proposed Bohners Lake will receive the same rate. This amounts to an estimated \$46,550.

#### Licenses & Permits

Charging for licenses and permits may be proportionately scaled as the town currently receives approximately \$15,700. However, to collect the estimated revenues the proposed village would need to adopt appropriate village ordinances, and implement a system to administer the programs generating fees. Therefore initially this amount could be close to zero until the appropriate ordinance and administrative structure is put into place. Current user fee revenues collected by the town are: liquor licenses, business/occupation licenses, cigarette licenses, dog licenses, soda water permits, building permits, owners permit for gravel pit, operating permit for gravel pit, cable franchise fees.

#### Fines & Forfeitures

The \$10,550 revenue mainly comes from the municipal court. The budget assumes that a new village would adopt a suit of ordinances similar to those currently in force in the town of Burlington.

#### Public Charges for Services

The Department concurs with the petitioner's estimate of \$2,000. This anticipates that the village will charge applicants for administrative costs relative to consultant review of subdivision plats, land divisions, rezoning requests, site plan approvals, assessment letters, fire department, snow & ice removal, maps &

copies, etc. In light of the building boom now occurring, this estimate is probably low, but there again, the fees may only be collected pursuant to a code of ordinances, and the presence of an administrative structure.

Solid Waste

Fees will net approximately \$95,650.

Other

\$0

Interest

\$0

Other Revenues

\$0

Asset Distribution

Because equalized values of the Bohners Lake area represent approximately 28% (\$87,412,000) of the total \$306,831,000 equalized value for the town of Burlington, 28% of any assets and liabilities of the town of Burlington, could be subject to apportionment under s. 66.03, Stats. Typical items included in apportionment are local tax levy proceeds prorated for the remaining tax year, town assets such as bank accounts, machinery and equipment, as well as any outstanding debt or trusts.

Table 5

**Town of Burlington Asset Estimate**

In dollars:

**Highway**

**Department**

Trucks and Power Equip.	205000
General Equipment	33500
Tools	6000
Office Equipment	1500
<i>Subtotal</i>	246000

**Police Department**

Squad Cars	24500
Department Equipment	30000
Office Equipment	16500
<i>Subtotal</i>	71000

**Assessor**

Office Equipment	10000
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**Building Inspector**

Office Equipment	8000
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**General Office**

Office Equipment	12000
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**Town**

**Hall**

Office Equipment	9000
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**Water Patrol**

Boats & Trailers	22000
Bouys	7000
General Equip.	2000
<i>Subtotal</i>	31000

**Fire Department**

Trucks/Power Equip.	417000
Fire Equipment	100000
Fire Station Equip.	14000
<i>Subtotal</i>	531000

**Buildings**

1086000

**Land**

100000

**TOTAL**

**2,104,000**

Source: Town of Burlington, and Camiros, Inc.

A new village of Bohners Lake would be entitled to approximately \$590,000 of the town of Burlington's assets. This could be in-kind or cash payments, or exchanged for services received over a period of time mutually determined by the communities. Potentially incorporation may offer the town and prospective village an opportunity for each to provide specialized services to the other – such as a village recreation director providing part-time services to the town.

#### Capital Projects

No pressing infrastructure or other needs were identified by the petitioners, but they were raised by the intervenors in testimony during the legislative hearing, and by intervenor's Exhibit E. Exhibit E itemizes \$631,700 (including prospective engineering and contract administration costs) of repairs for roads lying within the proposed village. (This is comparable to the amount expended by the sanitary district for the first-phase repair of roads following the installation of sewers – see following paragraphs.) Should incorporation occur, statutes provide for the dissolution of the sanitary district and the assumption of assets and liabilities by the proposed village.

In order to put the \$631,700 in perspective, road improvements could be funded for example, by using Board of Commissioners of Public Lands Trust Fund Loans, where current (March 17, 1999) interest rates vary from 4.75 to 6.0 % depending upon the term of the loan or example. For example, a ten-year note for \$631,700 at 5.5% with annual principle and interest of \$83,806, results in adding approximately \$1.23 per thousand of equalized value to every property tax bill. There are other methods of handling street reconstruction/repair/resurfacing and financing, including assessing the charges directly against the properties benefited.

Under the current agreement between the town of Burlington and Sanitary District #1, the sanitary district has completed phase 1 and phase 2 of the planned sewer work. An extension to serve the new Winkler school and other homes on Fulton Street has not yet been completed. Pursuant to this agreement, the sanitary district has financed the completion of a gravel base course and a two inch binder course of asphalt. According to Richard Scholze, attorney for the Bohners Lake Sanitary District, the sewer and road work completed by the sanitary district amounted to \$7,121,840. Of that total, \$635,435 was expended for road reconstruction. The town's engineer submitted evidence that the town intended to spend approximately \$1.6 million in the next three to five years completing road work on the 21.63 miles of roads in the territory proposed for incorporation. This includes patching some of the sanitary district's initial base work, manhole rings, asphalt binder, asphalt top, and gravel shoulders (see effect on the remainder of the town)<sup>42</sup>. It is unclear whether and when the town would actually expend this amount, as there is some uncertainty over absolute need, and the actual dimensions of final paved road and shoulder widths. Much depends upon the quality of the existing work, the amount of wear and settling that occurs over the next several seasons, and the desire on the part of residents and a prospective village board to actually increase pavement widths to the proposed 20-22-feet, with additional shoulder and man-hole work that increase would entail. The existing roadwork left the width unchanged, and did not include very much shoulder or culvert repair. Additional ditching and culvert work is advisable, in order to provide adequate drainage so as to protect the roadway investments. However, should shoulder work occur, most driveway aprons would need to be raised. The aforementioned work should be preceded by a stormwater management plan.

The costs of construction and debt service related to the sanitary sewer system and the associated road work have been funded through special assessment revenues and through a monthly user charge of \$30.00 per residential unit equivalent. The first special assessment was levied in 1994 and has a principal amount of \$2,313,249. A second special assessment was levied in 1996 and has a principal amount of \$4,119,170.

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<sup>42</sup> Norbert Theine, Town of Burlington Engineer, *Projected Street Improvement and Reconstruction Costs*, (Town of Burlington, February 1999).

Both assessments are collectable in installments over a 20 year period with interest of 4.5% per year. The special assessments were pledged as collateral for two Department of Natural Resources Clean Water Fund Loans. The first, dating from 1995, was in the original principal amount of \$2,859,000. The District has repaid \$517,097 of that principal amount. The second, dating from 1996, was in the original principal amount of \$4,148,212. The District has repaid \$907,180 of that principal amount. Both of these are 20 year loans.<sup>43</sup> Since the loans are financed through user fees and special assessments based on property within the sanitary district, residents who would be included within the boundaries of the proposed village, but are not part of the sanitary district would not be charged for paying off the remaining debt acquired by the proposed village.

If the proposed village is incorporated, the sanitary district would be dissolved and its debts and assets, including completed sewer lines and road work, will be transferred to the village. The remaining debt held by the sanitary district is \$5.6 million in revenue debt, and \$900,000 in general obligation debt. The remaining general obligation debt capacity for the village would be \$3.47 million, less \$900,000.

#### Property Tax Base

The proposed village of Bohners Lake would have a total estimated (1996) equalized value of \$87,412,000. This figure does not reflect 1997-98 building permit activity, or the general increase in area property values. Figure 1, page 62, shows that this is within the range for other villages within the tri-county area. The communities of Silver Lake and Paddock Lake are the most similarly situated to the Bohners Lake area, in that they are primarily residential in nature. A per capita value comparison among these similarly situated residential communities is also instructive (Figure 2, page 63). The Bohners Lake area's estimated per capita value of \$44,826, is the highest among these villages. Its' estimated per capita value is third highest of all the municipalities listed in Figure 2. The entire region has continued to experience property value increases over the past five years (Appendix 2). The Bohners Lake area's present and potential sources of property tax revenue have been shown to be similar to or above the value of nearby villages currently operating under home-rule powers.

#### Property Tax Rates<sup>44</sup>

Figures 3 through 5 on pages 64 through 66, give an overview of mill rates in the Bohners Lake region. Most important is the mill rate difference between the Town of Burlington and the proposed Bohners Lake village. Figure 3 shows that the local mill rate for the Town of Burlington in 1995 was \$2.936 per \$1,000 of assessed value, whereas the Department's estimated local mill rate for the proposed village is 4.832 per \$1,000. The estimated local mill rate for Bohners Lake as a village is 67% higher than the present town mill rate for taxes levied in 1996 and collected in 1997. However, considering this tax rate increase in context of the total mill rate residents pay, which includes elementary school, technical college, county, and other state property tax assessments, gives a better illustration of the overall property tax impact on residents within the area to be incorporated. In Figure 4, the regional cohort average for 1995 is \$26.925 per \$1,000. The total mill rate for the town of Burlington was \$25.051 per \$1,000 in 1995, and the Department's estimate for the proposed village is \$27.387 per \$1,000. This suggests a possible overall 9.3% total property tax rate increase for residents in the Bohners Lake area if it incorporates and residents kept a similar governmental service level. The estimated difference between the total mill rate of the proposed Bohners Lake and the town of Burlington is shown in Figure 5 on page 66. Appendices 3 and 4 show the total mill rates and the local mill rates for the town of Burlington and for comparable communities in the Bohners Lake region from 1993 to 1998. There is a significant and consistent drop in the total mill rates for the region between 1995 and 1996. This is likely due to a change in the formula for state aid to the school districts. However, the local mill rates for the town of Burlington have remained relatively consistent over the three-year period. No

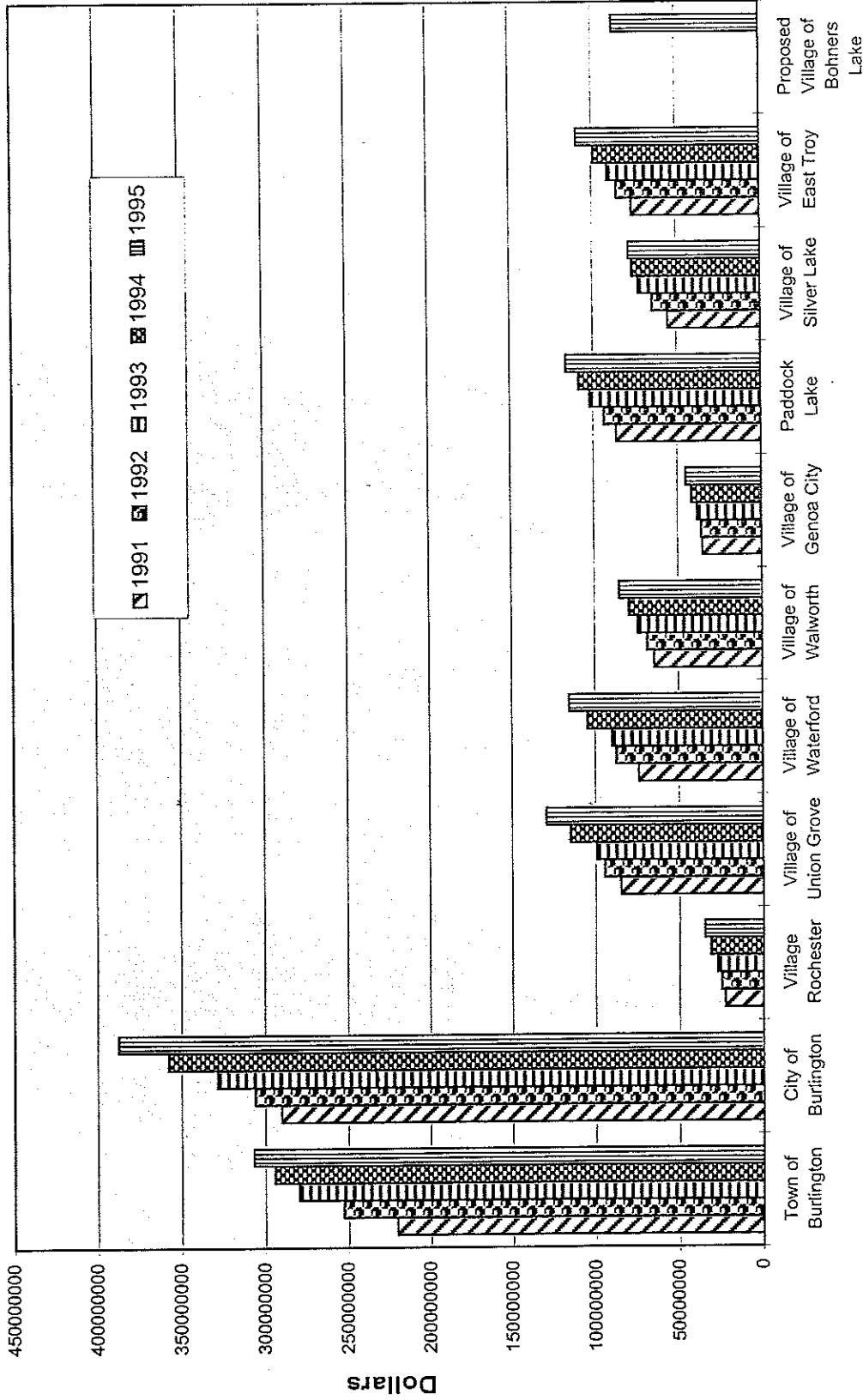
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<sup>43</sup> Letter from Richard Scholze, Attorney for Bohners Lake Sanitary District # 1, November 30, 1998

<sup>44</sup> Tax Rates are calculated by Municipal Boundary Review from the Wisconsin Department of Revenue publications: Town, Village and City Taxes, and County and Municipal Revenues and Expenditures.

FIGURE 1

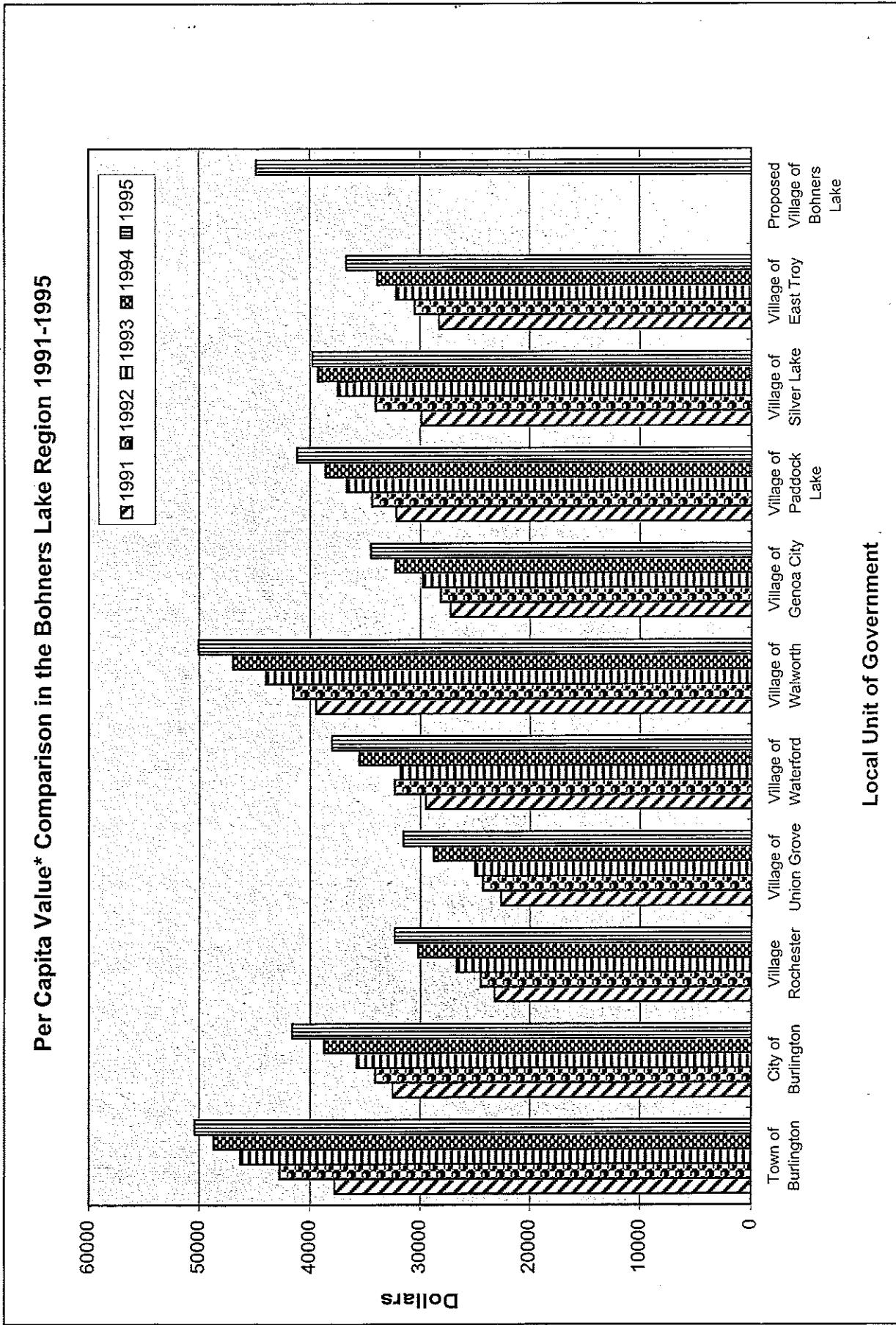
Total Equalized Value\* Comparison in the Bohners Lake Region 1991-1995



Local Unit of Government

\*Excluding TIF  
Source: WI Department of Revenue

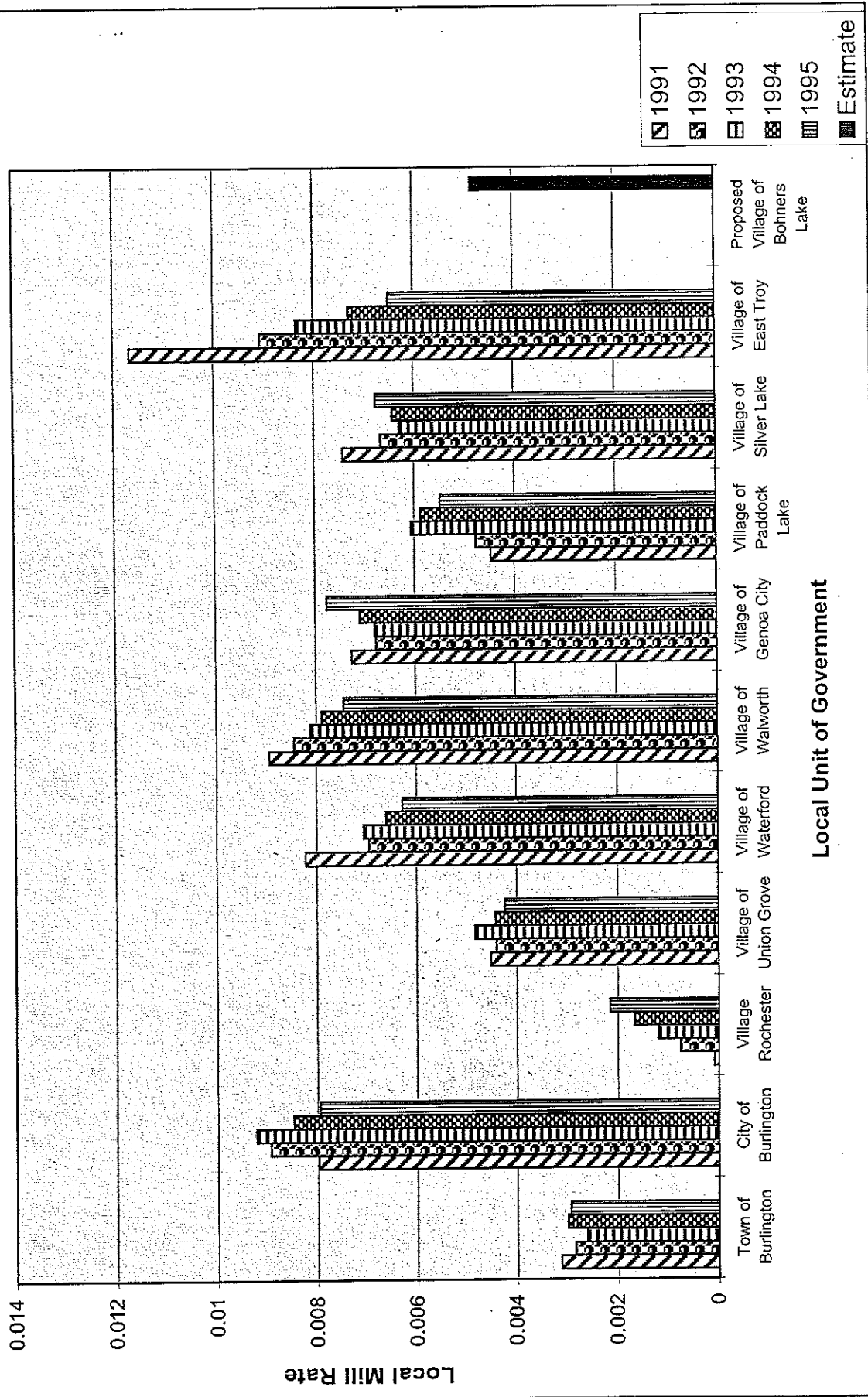
FIGURE 2



\*Excluding TIF  
 Source: WI Department of Revenue

FIGURE 3

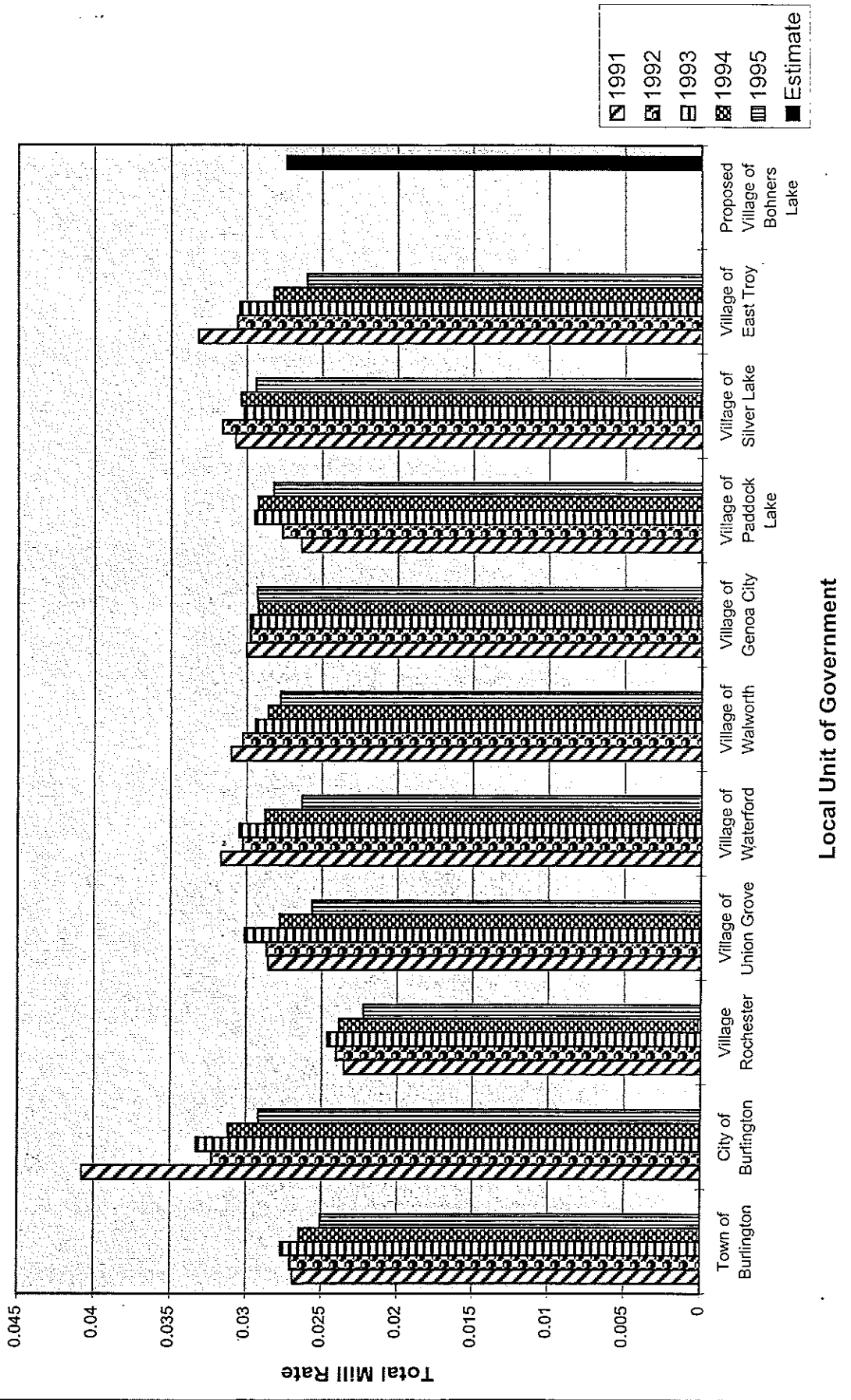
Local Millrate\* Comparison in the Bohners Lake Region



\*Excluding TIF.  
Source: Wi Department of Revenue

FIGURE 4

Total Millrate\* Comparison in the Bohners Lake Region

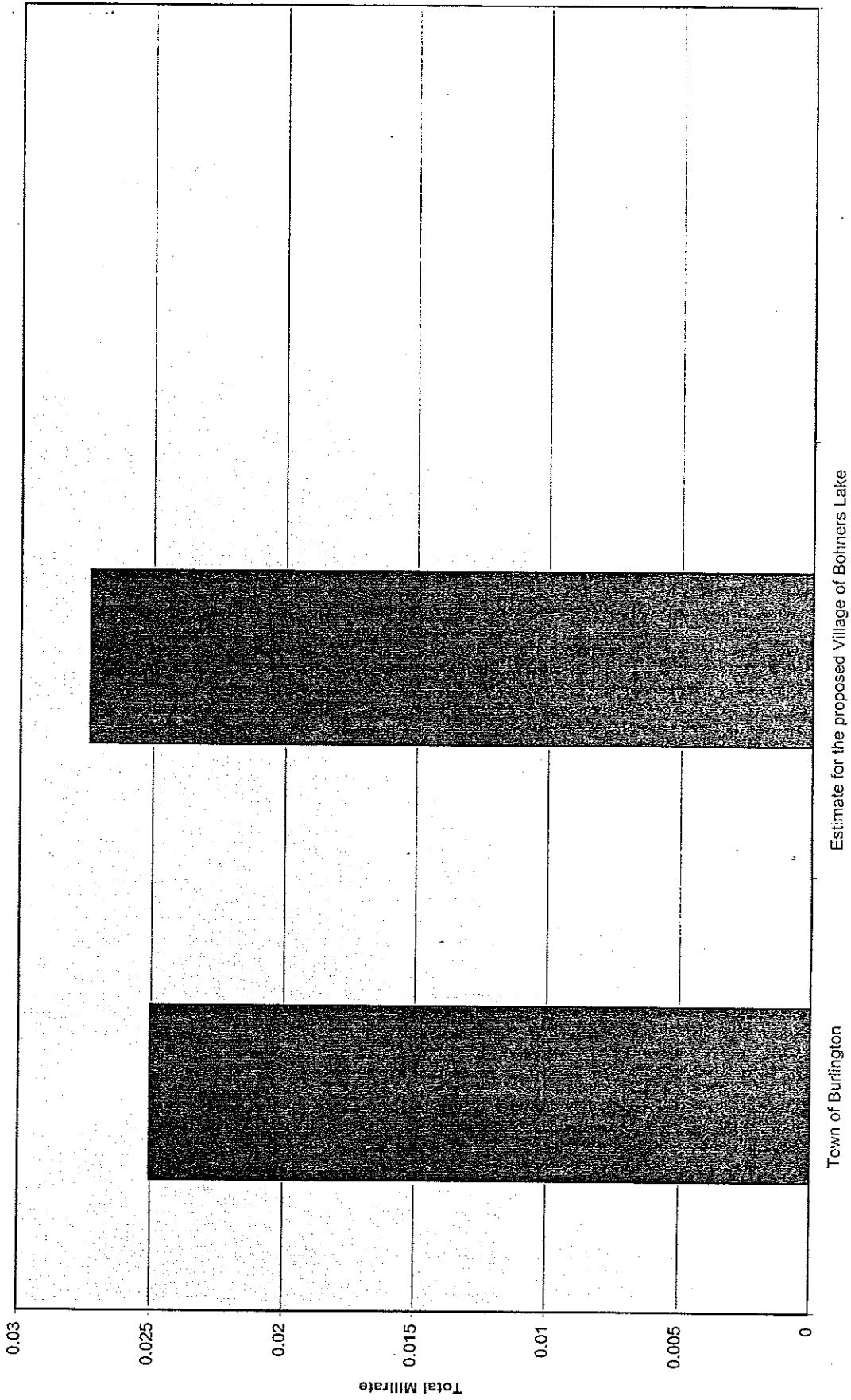


Local Unit of Government

Based of full value excluding TIF.  
Source: Wi Department of Revenue

FIGURE 5

Total Millrate\* Comparison Between Bohners Lake and Town of Burlington



\*Excluding TIF  
Source: Wi Department of Revenue

trends are apparent in the most recently available data which substantially alter the department's assessment of the fiscal capacity of the proposed village of Bohners Lake.

While there are some significant differences between the estimated budgets of the intervenors and the petitioners for specific items, the differences in the local mill rates resulting from these estimates is about \$2 per \$1,000. This difference would result in a payment change of approximately \$200 per year on a \$100,000 home. The Department's estimate of the local mill rate for the proposed village is higher than that of the petitioners, and slightly lower than that of the intervenors.

**Determination:**

Incorporation would result in an estimated total mill rate for the proposed village that is only slightly above the regional cohort average for other comparable villages in the region. The budget proposed by the petitioners would appear to provide a lower level of services than that currently provided by the town of Burlington. The Department estimated the cost for the proposed village to provide a comparable level of service as the town, and found the proposed village's tax base enables it to form a budget that compares favorably with the tax rates of other villages in the region. Therefore this standard is determined to be met.

**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." (Wis. Stats. Sec. 66.016 (2) - c -)

**ANALYSIS**

Physical Effects of Proposed Village Boundary and Shape

Above the northwest corner of the proposed village boundary there is an isolated tract of 83.29 acres of town land: the Southwest 1/8 of Section 7, Range 19 East, Town 2 North (see Map 16 on page 45). The area primarily consists of forest land and there is wetland, agricultural/open space, and a small section of residential development (see Map 5 on ppg 11 & 12). The area is not a true town island since it is not entirely surrounded by a single jurisdiction. Should incorporation occur, the Department recommends that this area be annexed by either the proposed village or the city of Burlington in order to avoid any possible jurisdictional confusion (see related service issues below).

Public Services

According to both the Fire and Police Departments in the town of Burlington, the aforementioned 83.29 acre tract of town land currently demands minimal service.<sup>45</sup> The Police Chief reported that there is an average of 4 service calls from this area per year.<sup>46</sup> Service needs are unlikely to increase much in the future insofar as the wetlands and steeply sloped landscape hinders development. Therefore, the Department concludes that the limited direct access to this area from the rest of the town does not pose a significant problem, but it may increase if more seasonal residences (Sun Ray Hills) are converted to full-time residences.

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<sup>45</sup> Personal communication with Town of Burlington Police Chief Michael Mehring, February 1999; Personal communication with Town of Burlington Fire Chief Randy Larsen February 1999.

<sup>46</sup> Personal communication with Chief Mehring, February 1999.

Regarding other service issues, the proposed village boundary includes the entire sewer service area and the school district boundaries remain unchanged. In terms of fire service, if Bohners Lake does incorporate, the village may acquire the town's fire station #2, located within the proposed boundary. Currently, this fire station serves the area bounded by the Walworth County line to the west, the Kenosha County line to the south, STH "83" on the east and the city of Burlington to the north (see Map 18 on page 69). Fire station #2 currently houses two pumper trucks. There are two other fire stations remaining in the town that have one pumper truck each. According to the town fire chief, the fire department would find it difficult to service the remainder of the town with just the two pumper trucks.<sup>47</sup> However, there is the possibility that the town and proposed village would create a mutual aid agreement. The agreement could be based upon the county-wide mutual aid agreement provision and could create a situation where service would stay the same both inside and outside the proposed village boundary. Under the county provision, the town currently shares fire service with the town of Lyons.

Overall, the petitioner's boundary is quite regular and straightforward and the Department, in consideration of the testimony and information provided/collected, believes that incorporation would not necessarily lead to permanent irregular boundaries nor lead to inconvenience in delivery of services to the remainder of the town.

#### Land Use Effects

The proposed boundary would not negatively affect the area to the northeast and east of the proposed boundary since the boundary does not cut into this area's vast tract of farmland, interspersed with wetland and forest land. There truly is a natural eastern boundary between the proposed village and the remainder of the town of Burlington, based on topography, soils, wetlands, and reinforced by the lack of highway access. And, the petitioner's goal of maintaining rural residential character coincides with the town's designation in its land use plan of "rural residential nodes," around Bohners Lake. The rural residential node refers to unsewered (at the time the town land use plan was adopted) rural subdivisions in the town that are suitable for expansion. As stated in the town plan, the nodes denote starting points for further development rather than identifying how much area will be needed for twenty years of development.<sup>48</sup>

The proposed village's northern boundary is approximately three-quarters of a mile south of the Wisconsin Department of Transportation's recently approved plan for the STH 11-36-83 bypass (see Map 3, page 8). It is possible that the city will annex remaining town land surrounding the bypass, extending down toward the proposed Bohners Lake northern boundary, and west toward the town of Lyons beyond the existing city of Burlington westerly municipal limit line. These lands are characterized in the "Land Use Plan" as "urban expansion"<sup>49</sup>. Adopted land use plans for the Burlington area show proposed industrial, commercial and residential expansion along the proposed bypass route.<sup>50</sup> The proposed village boundary serves as a useful separation line between such more intense urban development and possible annexation and the rural residential character of the proposed Bohners Lake area. Incorporation may provide greater jurisdictional protection for the remaining Burlington Woods ecosystem than either the town or Racine County has historically been able to provide,<sup>51</sup> as incorporation would remove the area from some of the zoning oversight currently provided by Racine County (but not for wetland, shoreland, and floodplain areas until such time as the prospective village adopted appropriate ordinances according to statute and Wisconsin Administrative Code requirements).

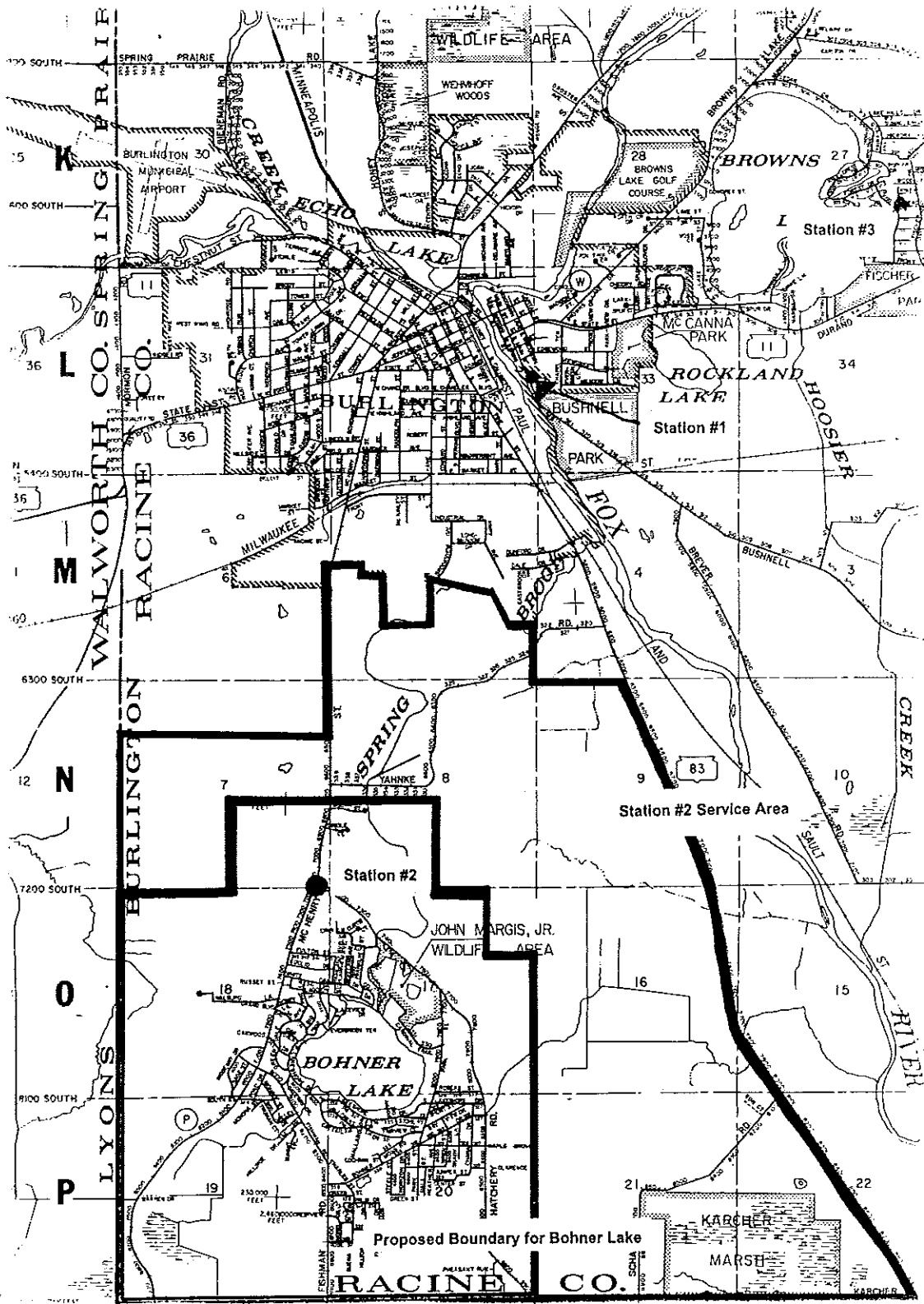
<sup>47</sup> Personal communication with Larsen, February 1999.

<sup>48</sup> Camiros. *Land Use Plan: Town of Burlington, Wisconsin*, (Madison, WI: Camiros, January 1994), p. 23.

<sup>49</sup> "Land Use Plan, Town of Burlington, Wisconsin (adopted January 27, 1994)" p. 22.

<sup>50</sup> WIDOT, *Draft Environmental Impact Statement: Burlington Bypass Study*, (Waukesha, WI: WIDOT, April 17, 1996), p. I-26.

<sup>51</sup> Based on the experience of the Department with the history of annexation disputes occurring over the past decade in this area, and the written correspondence received by the Department.



Map # 18  
Fire Service Areas

Construction for the \$80 million "Burlington bypass" project is slated for 2004. The Citizen's Bypass Coalition comprised of town residents maintains that the bypass can still be stopped. The Coalition says that WisDOT did not heed town residents' concerns during the planning stages of the road. The Coalition feels that the bypass would encourage additional annexation of town land by the city of Burlington and strip mall development at the bypass's seven planned intersections. The Coalition also asserts that since the bypass construction would require the state to acquire the land of 80 to 100 town residents, this would reduce the total land value of the town. According to WisDOT and other supporters of the bypass, its primary benefit would be to remove semi-trucks from the narrow streets of downtown Burlington.<sup>52</sup> People traveling north from the Bohners Lake area toward Milwaukee would benefit since they would not have to go through the city of Burlington.<sup>53</sup>

Referring to the transportation section of this document on page 27, the 1996 annual average daily traffic count figures show CTH "P" to be well under the peak capacity level identified by WisDOT for major collectors. Based on a level of service that permits isolated instances of restricted movement at peak times, 9,160 trips/day is considered capacity for a major collector. A recent count for the segment of CTH "P" between the city of Burlington and Bohners Lake found 7,000 trips/day. This count on CTH "P" gradually decreases as it runs south of the city of Burlington. The count falls to 3,100 trips/day as CTH "P" passes through the southwestern portion of the area proposed for incorporation.

Fiscal Effects (refer to the previous budget comparison presented in Table 4, page 50)

*Revenue:*

Approximately 1,950 residents, or 32% of the town's population would become residents of the new village.<sup>54</sup> Therefore incorporation prospectively leaves two-third's of the population in the town along with 72% of the property tax base. This is significant since slightly more than half of general government operations in the town are funded by the local property tax. The remaining general government operations are primarily supported by state shared revenue and aids, and charges for services (licenses and permits, fines, forfeits and penalties, public charges for services and interest income).<sup>55</sup>

The town of Burlington's per capita property value in 1998 was \$58,083. This is the highest per capita property value of eleven area municipalities. The removal of the Bohners Lake area population would lead to an increase in per capita property value. However, since the town's per capita property value exceeded the statewide average figure in 1998 of approximately \$47,584, and since a loss of population will cause it to rise even higher, the town does not currently nor will it in the foreseeable future receive "aidable" revenues. State highway aids are not as affected by removal of the territory however since they are subject to a different formula than per capita aid payments.

State shared aids (primarily the per-capita aid payment) represents a declining percent of total revenue for Burlington, falling from 21% to 11% from 1990 to 1995. In contrast, state highway aids (town road aid based on average levels of expenditure) have ranged from 5% to 6% of total revenue for Burlington and are on a slight rising trend.

*Expenditure:*

Incorporation would relieve the town of providing road repair and maintenance services to the 21.23 miles of road located within the proposed village. The town has prospectively committed to the process of

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<sup>52</sup> Helena Dowd, "Residents rise up in effort to stop highway project," Milwaukee Journal-Sentinel, February 28, 1999.

<sup>53</sup> Personal communication with Brian Bleisner, WIDOT, January 1999.

<sup>54</sup> Camiros, *Fiscal Impact Analysis of Proposed Incorporation of the Bohners Lake Area*, (Camiros, January 28, 1997), p. 1.

<sup>55</sup> Town of Burlington 1999 Budget.

completing road work within the Bohners Lake sanitary sewer district. Pursuant to an agreement between the town and the sanitary district, the sanitary district has already financed the installation of sewers, and the base and binder layer of asphalt. If the incorporation does not occur, the town is to complete and finance remaining road work including base patching (some of the existing base laid down several years ago may need to be redone), manhole rings, asphalt top and gravel shoulders. The Town Engineer projects that this work will cost approximately \$1.6 million.<sup>56</sup> He asserted that if the proposed village incorporated and some of the road work was still pending, the village would be responsible for financing this work. To date, the town does not appear to have contributed to the road work, but says that it will complete the remaining road work (as a general fund item) if the proposed incorporation does not occur (this is the current understanding of the Department after many, many phone calls and written correspondence from the parties).

Incorporation could also prospectively relieve the town of police service expenses. The town of Burlington Police Department reported that 37% of the town's calls/complaints came from the Bohners Lake area in 1996.<sup>57</sup> Mr. Kenney, Town Chairman, testified at the January 29, 1997 hearing that 43% of police resources are expended in the Bohner Lake area.<sup>58</sup>

If the village area would incorporate, the town Police Department would experience roughly 37% fewer calls and its resource expenditure would likely decrease by approximately 43%. Despite this potential decreased demand and level of expenditure, the town of Burlington and Camiros, Inc., argue that the town must keep its police expenditures the same whether or not the village incorporates, without offering an explanation to the Department. Given this stance, the town would be prospectively choosing to offer the remainder of the town a higher level of service.

If instead the town reduced police expenses by say 30%, it could save \$68,000 overall. In this case, the town would incur an annual deficit of \$59,120 rather than the \$127,300 annual deficit estimated by Camiros, Inc..<sup>59</sup> Therefore, rather than paying a mill rate of \$3.35 as calculated by Camiros, Inc., the town residents would pay an estimated mill rate of \$3.13. This latter figure is an increase of \$.193 from the 1996 mill rate of \$2.94. This is a 6.6% local mill rate increase for the remaining town with incorporation and a mere .77% (say 1%) increase in the total mill rate (includes school, county, state, and other taxes).

Based on the above calculations, the total mill rate increases from its 1995 level of \$25.00 to \$25.19. Therefore, instead of paying \$2,500, a town resident with a home valued at \$100,000 would pay a property tax bill of \$2,519.

### **Determination**

The Department concludes that overall, the incorporation of Bohners Lake would likely have minimal effect on the remaining town's land use, public services or fiscal condition. While still minor, perhaps the effect on public services deserves the most attention. Incorporation would cause the town to seriously consider what level of services to continue to provide its residents. The Department recognizes that potentially changing long-standing personal and working relationships is at best difficult. In terms of fire service, the town might consider creating a mutual aid agreement with the proposed village so that the two could continue to share Fire Station #2 and its resources along with associated fire personnel.

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<sup>56</sup> Norbert Theine, *Projected Street Improvement and Reconstruction Costs: Bohner Lake Area in the Town of Burlington - Racine County, Wisconsin* (Town of Burlington, WI, February 1999).

<sup>57</sup> Public hearing pursuant to Petition for incorporation of Bohners Lake, January 29, 1997.

<sup>58</sup> Ibid.

<sup>59</sup> Camiros, *Fiscal Impact Analysis*, January 1997.

With regard to the town's physical shape and jurisdictional issues, the proposed village boundary leaves an isolated tract of land above its northwest corner, this is not a true statutory town island (as defined by s. 66.021 (15), Stats.). Furthermore, the area currently requires minimal services due to limited development and the difficulty of future development due to the steeply sloped landscape. The area proposed for incorporation includes the entire Bohners Lake Sanitary Sewer District, thereby potentially removing one commission from town oversight. In terms of land use, the proposed boundary was drawn to exclude as much farmland in the town as possible, thereby supporting the town's land use plan while retaining the rural character of the proposed village. Finally, the proposed incorporation would appear to have a minor effect on the taxes of town residents, given an estimated potential one-percent increase in property taxes. This translates into a potential \$19 per year increase for a town home valued at \$100,000.

Therefore, after considering the potential impact of incorporation upon the remainder of the town, and reviewing the various exhibits, briefs, and hearing tapes, the Department determines that petitioners have met this standard.

## SUMMARY OF THE ANALYSIS OF THE INCORPORATION 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 – not applicable

Therefore the determination of the Department as prescribed by S. 66.014 (9) (e) 3, Stats., is:

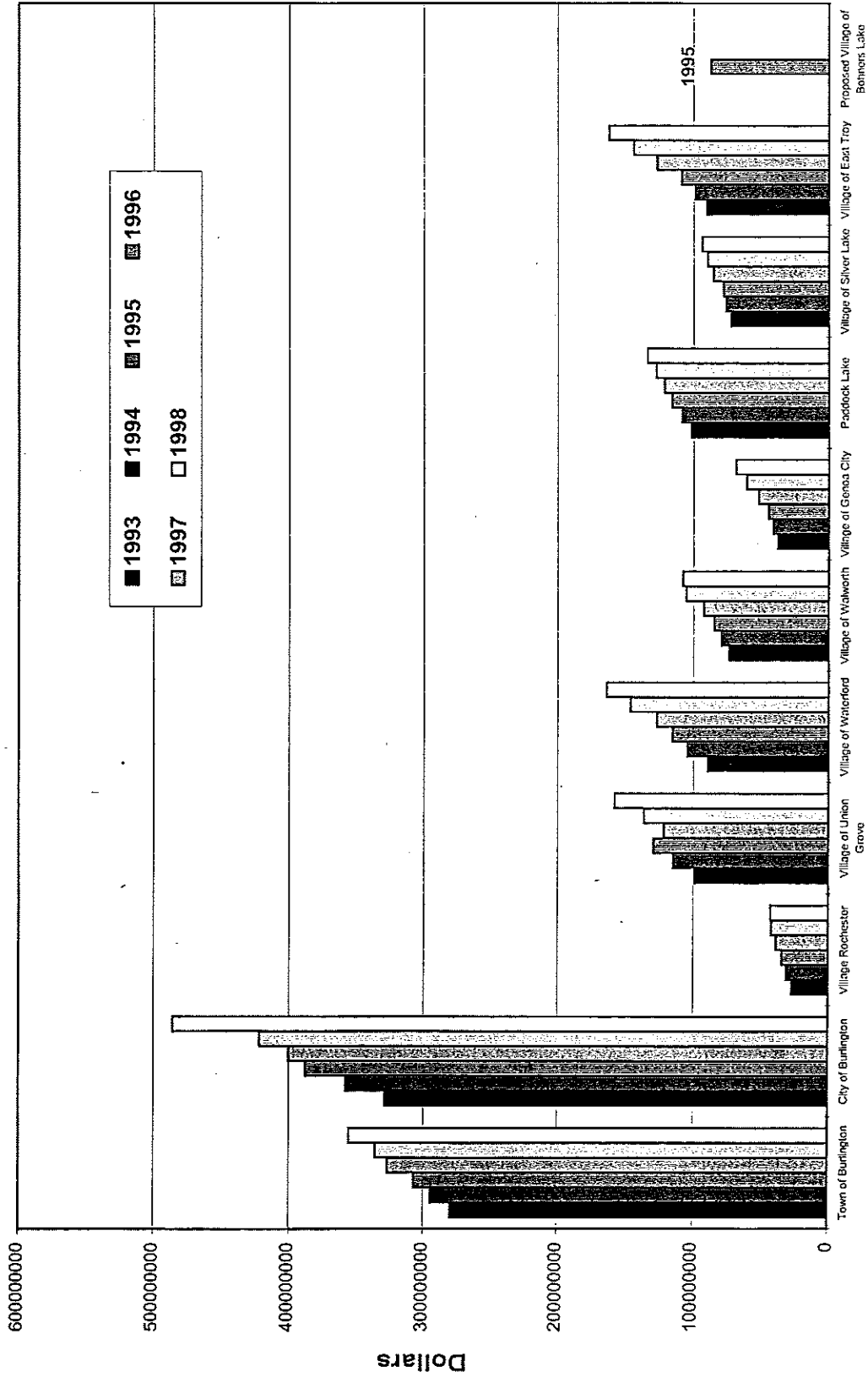
THE PETITION AS SUBMITTED SHALL BE GRANTED  
AND AN INCORPORATION REFERENDUM HELD

## EXHIBIT A

Description of Territory to be incorporated includes the following:

- The Southeast 1/4 of Section 7, Range 19 East, Town 2 North.
- The Southwest 1/4 of Section 8, Range 19 East, Town 2 North.
- Section 17, Range 19 East, Town 2 North, excluding the Northeast 1/4 of the Northeast 1/4 of said Section.
- Section 18, Range 19 East, Town 2 North.
- Section 19, Range 19 East, Town 2 North.
- Section 20, Range 19 East, Town 2 North.

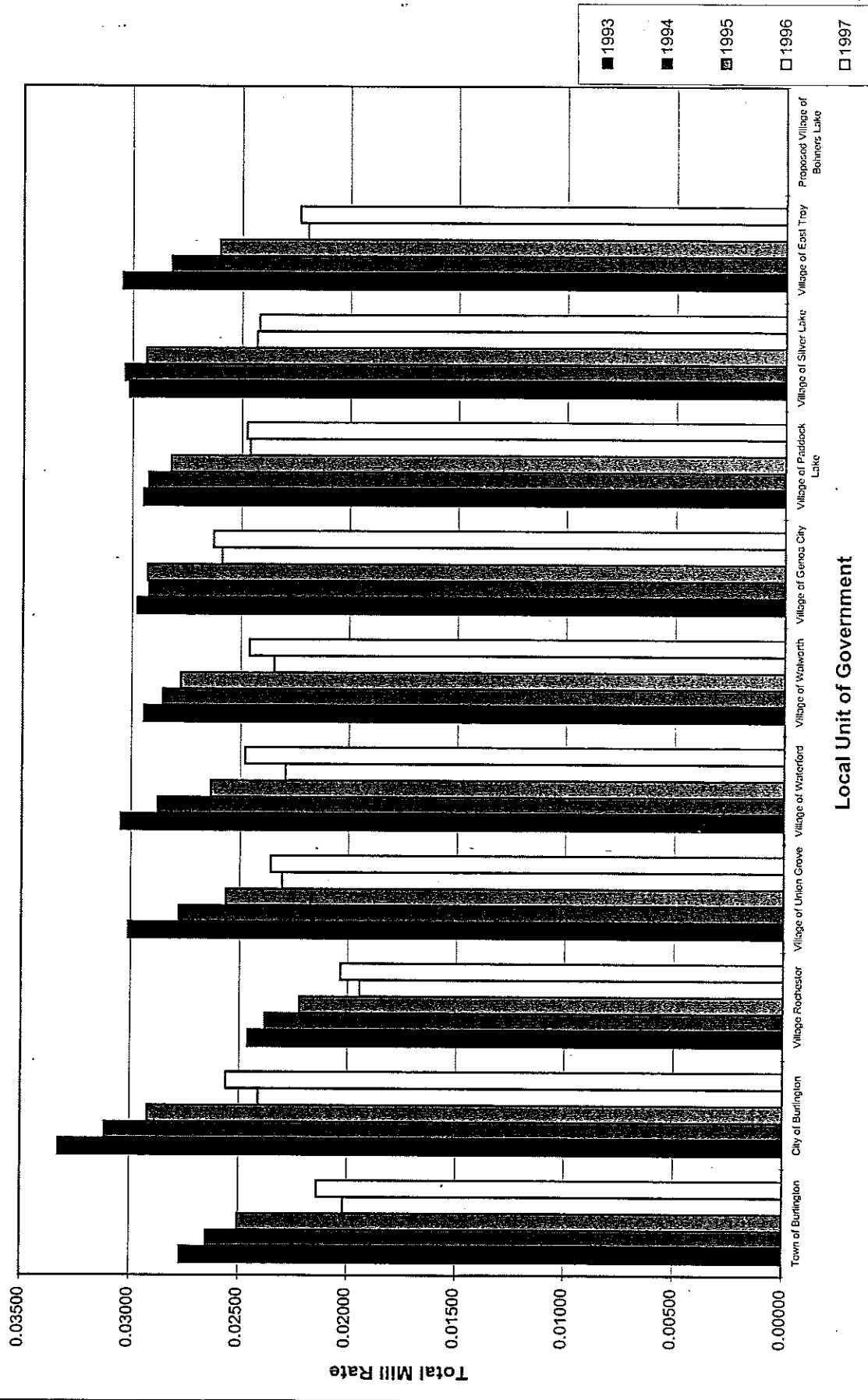
Full Value\* Comparison in the Bohners Lake Region 1993-1998



Local Unit of Government

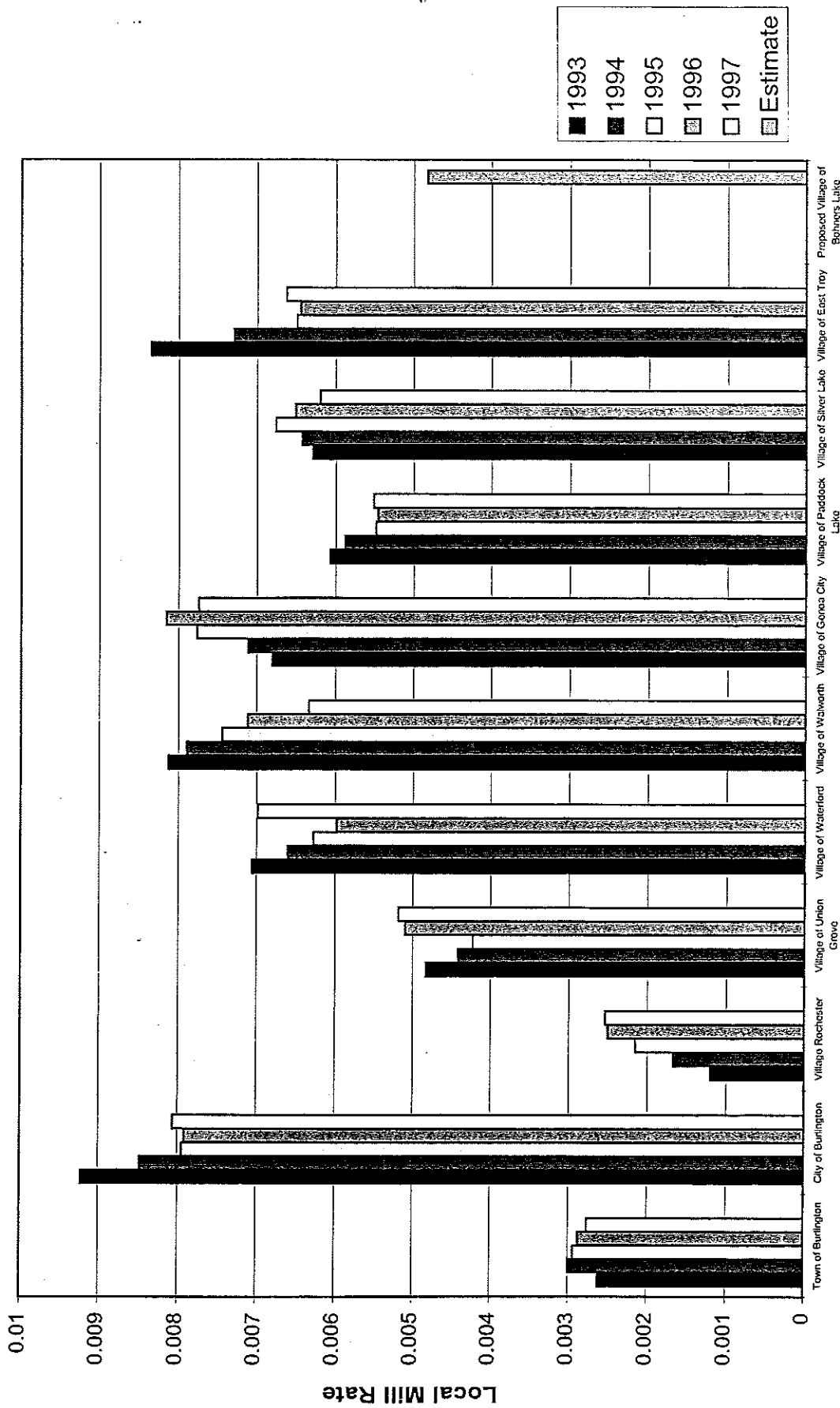
\*Excluding TIF  
Source: WI Department of Revenue

Total Mill Rate\* Comparison in the Bohners Lake Region  
1993-1997



\*Excluding TIF  
Source: WI Department of Revenue

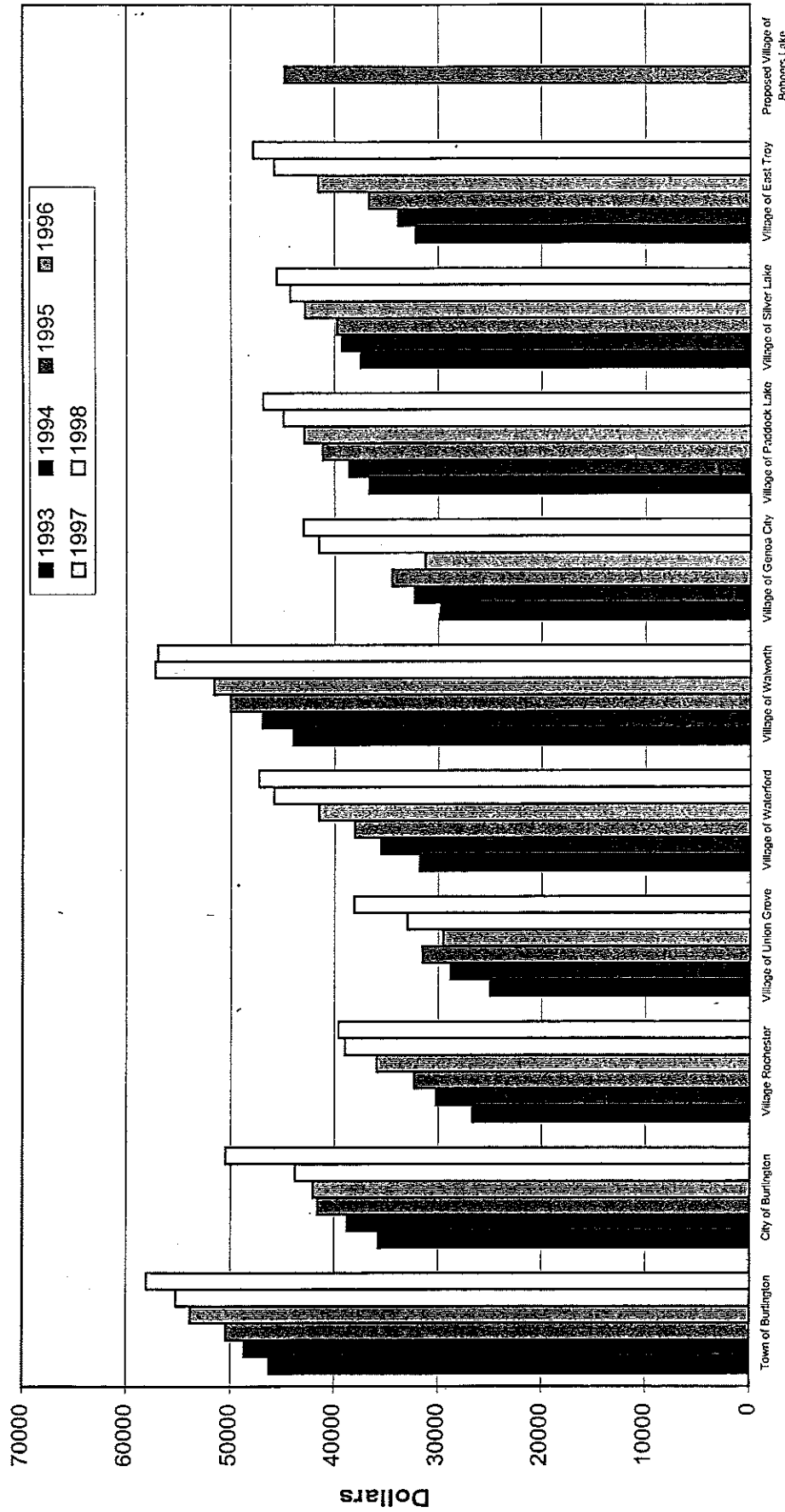
Local Millrate\* Comparison in the Bohners Lake Region 1993-1997



Local Unit of Government

\*Excluding TIF  
Source: WI Department of Revenue

Per Capita Value\* Comparison in the Bohners Lake Region 1993-1998



Local Unit of Government

\*Excluding TIF  
Source: Wi Department of Revenue

POPULATION, HOUSING UNITS, RESIDENTIAL LAND, AND DEVELOPABLE LAND IN THE  
BOHNER LAKE STUDY AREA BY U.S. PUBLIC LAND SURVEY ONE-QUARTER SECTION: 1990

Quarter Section	Total Population	Occupied Housing Units	Seasonal Housing Units	Other Vacant Housing Units	Total Housing Units	Residential Acres	Developable Acres
0219074	13	5	0	0	5	5.89	90.00
0219083	51	18	0	0	18	19.73	86.27
0219171	7	2	0	0	2	2.79	134.56
0219172	214	70	5	3	78	35.47	13.16
0219173	108	23	53	3	79	26.91	4.57
0219174	65	19	15	0	34	16.36	102.75
0219181	142	52	0	0	52	29.05	101.33
0219182	11	4	0	0	4	4.61	42.58
0219183	3	1	0	0	1	0.89	83.85
0219184	340	127	67	9	203	74.99	21.27
0219191	114	37	2	2	41	29.30	53.93
0219192	27	9	0	0	9	6.71	125.05
0219193	69	20	0	0	20	18.09	34.69
0219194	8	3	0	0	3	2.36	101.05
0219201	271	96	16	7	119	61.93	26.91
0219202	256	114	46	4	164	74.83	2.18
0219203	206	72	4	7	83	34.13	90.34
0219204	65	20	0	0	20	17.58	131.30
Study Area Total	1,970	692	208	35	935	461.62	1,245.79

Source: SEWRPC.

## Appendix 7

### DEPARTMENT CONTACTS MADE DURING RESEARCH AND ANALYSIS (includes those cited in footnotes)

Julie Anderson, Racine County Planning Unit, (3/19/97)

Brian Bleisner, WIDOT, (1/99)

Chip Brown, State Historical Society, Historical buildings and archeological sites, (3/14/97)

James DeLuca, Building Inspector and Technical Assessor, Town of Burlington, (3/99)

Doug Dalton, DOT, Road Capacities, (7/8/97)

Mike Farley, DNR Milwaukee office, LUST site information, (10/15/97)

Tom Foht, Kapur & Associates, Consultant to DOT for Burlington Bypass, (4/30/98)

Richard Gruenert, Town of Burlington Highway Department, (7/23/97, and 8/12/97))

Jim Harris, DOT District #2, Maps, (3/14/97)

Lisa Helmuth, DNR, (10/8/97)

Loren Hoffmann of OCS on GIS applications, (on going)

Ronnie Jones, Supreme Court of Wisconsin, (2/18/97)

Dick Lange, DOT, Accident Statistics, (3/17/97)

Randy Larsen, Town of Burlington Fire Chief, (2/14/99)

Mike and Vita Losacco, owners of Sun Ray Hills, (8/25/97)

William McReynolds, Racine County Sheriff, (2/7/97)

Michael Mehring, Town of Burlington Police Chief, (2/99)

Gary Olsen, Building and Grounds Supervisor, Burlington School District, (1/99)

Victor Pappas, DNR Milwaukee Office, (4/30/98)

Steve Pudloski, UW-Madison. Question about road condition rating software, (7/31/97)

Helen Schaefer, Clerk, Town of Burlington, (various conversations February and March 1999)

Connie Scherer, Burlington Water Pollution Control District, (5/27/97)

Richard Scholze, Attorney for Bohner's Lake Sanitary District # 1, (11/30/98)

Keith Sealy, DOR, Division of State and Local Public Finance, (2/13/97, and 2/27/97)

Jim Selmer, Horticultural Agent UWEX, Racine County, (3/14/97)

Ron Shields, Sergeant of Water Patrol, Town of Burlington Police Department, (3/ 9/99)

Jackie Shuda, DNR, Sent information on Burlington Wastewater Treatment Plant, (5/1/98)

Peter Smet, Administrator, Burlington Area School District, (3/14/97, and 4/21/97)

Rick Stadelman, Director Towns Assc. About the typical ways towns pay for road repairs after sewer installation, (3/3/97)

Lynn Stanley, Lake Tishigan Sanitary District, (5/27/97)

Norbert Theine, Town of Burlington Engineer, (3/2/99) and (3/4/99)

Marsha Traska, DOT, Highway Aids, (3/3/97)

Neal Wiener, DOT District #2, TIP plans, (3/14/97, and 4/17/97)

Patricia Young, DNR Milwaukee Office, LUST site information, (10/15/97)

## Appendix 8

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## Appendix 9

### List of Exhibits

#### Petitioners:

- Exhibit #1 – Budget Alternatives
- Exhibit #2 – Steinke Resume
- Exhibit #3 – Large Map of Bohners Lake
- Exhibit #4 – Map of Proposed Village Boundary
- Exhibit #5 – Major Soil Landscape
- Exhibit #6 – USGS Transportation Routes
- Exhibit #7 – SEWRPC Hwy Bypass Routes for Hwy 36
- Exhibit #8 – Map of Environmental Corridors
- Exhibit #9 – Pages from Burlington Phone Book
- Exhibit #10 – Burlington Chamber of Commerce Map with Bohners Lake as Separate Area
- Exhibit #11 – 9/11/96 Agenda from Incorporation Mtg.
- Exhibit #12 – Town of Burlington Land Use Plan
- Exhibit #13 – Map of Bohners Lake Sewerage District
- Exhibit #14 – List of Businesses at Bohners Lake
- Exhibit #15 – Ad from 1923 for Lots around Bohners Lake Summer-Haven Plat
- Exhibit #16 – Goals of Bohners Lake Improvement Assn.
- Exhibit #17 – History of Bohners Lake
- Exhibit #18 – Letters

#### Intervenor:

- Exhibit A – Blue Resume
- Exhibit B – Camiros Fiscal Impact Report
- Exhibit C – Camiros Homogeneity and Compactness Report
- Exhibit D – Hearing display on the fiscal impact of incorporation
- Exhibit E – Hearing display on fiscal impact on Bohners Lake area
- Exhibit F – Land use map – large map (figure 4 during hearing)
- Exhibit G – Letter from Ross Marshall on fire and EMS
- Exhibit H – Letter from Randy and Sue Ciabattoni
- Exhibit I – Township budgets
- Exhibit J – List of Town Services
- Exhibit K – Town of Burlington Police Reports
- Exhibit L – List of roads and estimated repair costs
- Exhibit M – Building permits summary
- Exhibit N – List of business locations in the Bohners Lake area and assessed value
- Exhibit O – Letter from Carol Hooker
- Exhibit P – Letter from Evelyn Vos
- Exhibit Q – Letter from Ms. Impens

#### City of Burlington:

- Exhibit B1 - Wastewater Agreement
- Exhibit B2 - Sanitary District Cost-Sharing Agreement

## Appendix 10

### ACKNOWLEDGEMENTS

I would like to gratefully acknowledge the research and drafting assistance provided by Municipal Boundary Review personnel Robert Zeinemann, Laura Yaffe, and Linda Horvath, who persevered despite the distractions presented by 11 other incorporation petitions currently under review. Robert Zeinemann and I were present during the Bohners Lake hearing, and Laura Yaffe and Linda Horvath reviewed the hearing tapes. All of these individuals have personally participated in site visits to the territory proposed for incorporation.