

STATE OF WISCONSIN  
DEPARTMENT OF ADMINISTRATION

TOMMY G. THOMPSON  
GOVERNOR  
Mark D. Bugher  
SECRETARY



Office of Land Information  
Services  
Municipal Boundary Review

17 South Fairchild Street, 7th Fl  
Madison, Wisconsin 53703  
Ph: (608) 266-0683, (608) 266-9728  
Fax: (608) 266-5519

June 4, 1999

The Honorable James R. Kieffer  
Circuit Court Branch VIII  
P.O. Box 1627  
Waukesha, WI 53187-1627

Re: 96-CV-1892 (Incorporation of the Town of Brookfield)

Dear Judge Kieffer:

Pursuant to s. 66.014 (9), Stats., the Department is forwarding to you its determination and findings on this matter and the Department determines pursuant to s. 66.014 (9) (e) 2., Stats., that:

"the petition as submitted shall be dismissed"

For convenience, the Department suggests that it retain four record storage boxes of information, correspondence, and publications collected from local, regional, and state agencies. This material is referenced in the text of the determination, or included in the bibliography attached to the determination. These files will become a permanent part of the Department's municipal incorporation record series, and are available for public inspection at any time. Please advise if the court desires to inspect these records, or to have them copied in full for the court.

This decision essentially revolves around whether or not it is possible to incorporate 7 widely separated areas of the town without violating statutory language and intent that incorporable communities be homogenous and compact considering the various standards of s. 66.016 (1) (a), and secondly, whether incorporation would hinder the resolution of "metropolitan problems" as defined by s. 66.016 (2) (d), Wis. Stats. We have tried to fairly characterize the nature of the core area of the town, namely Goerkes Corners, excepting several parcels which we discuss in the body of the incorporation.

The Department greatly appreciates the excellent cooperation received from all parties, and particularly the employees and elected officials of the Town and City of Brookfield, employees of surrounding jurisdictions, Waukesha County staff, and the staff of the Southeastern Wisconsin Regional Planning Commission. Throughout the determination, we have hinted at opportunities for potential cooperative interaction between the parties, including the City of New Berlin, should the parties-in-interest desire to pursue alternative dispute resolution. Should you or the parties-in-interest have any questions concerning this determination, or wish to discuss other matters, please call me at (608) 266-0683.

This letter and accompanying original copy of the determination is being hand-delivered to you. Copies of this letter and the determination are being mailed to all of the parties of record, the affected elected officials, and their counsel.

Sincerely,



George Hall, Director  
Municipal Boundary Review

Attachment

Cc: Christine Renner, Representative of the Petitioners  
Erva Carlson-Schmidt, Alternate Representative of the Petitioners  
Keith Henderson, Chairman, Town of Brookfield  
Barbara Hartung, Clerk, Town of Brookfield  
James W. Hammis, Attorney for the Petitioners  
Kathryn C. Bloomberg, Mayor, City of Brookfield  
Kris Schmidt, Clerk, City of Brookfield  
Suzanne K. Schalig, Attorney for the City of Brookfield  
Carol Lombardi, Mayor, City of Waukesha  
Thomas Neill, Clerk/Treasurer, City of Waukesha  
Curt R. Meitz, Attorney for the City of Waukesha  
Sandra Salbashian, Clerk, City of Pewaukee  
Richard Farrenkopf, Clerk, Village of Menomonee Falls  
James Pellowski, Clerk, Village of Elm Grove  
William Bowers, Clerk, City of New Berlin  
M. Chris Swartz, Clerk, Village of Sussex  
Michaelene Knoebel, Clerk, Town of Waukesha  
Judith McDonald, Clerk, Village of Lannon  
Jeffrey Musche, Clerk, Town of Lisbon  
Michael Blaska, Director, DOA Office of Land Information Services  
Mark Saunders, DOA Deputy Legal Counsel  
Brian Hayes, DOA Office of Legal Counsel  
F. Thomas Creeron, III, DOJ Assistant Attorney General

---

STATE OF WISCONSIN

CIRCUIT COURT

WAUKESHA COUNTY

---

In Re:

THE INCORPORATION OF THE TOWN  
OF BROOKFIELD WAUKESHA COUNTY,  
WISCONSIN AS THE VILLAGE OF  
BROOKFIELD, CHRISTINE RENNER and  
ERVA CARLSON-SCHMIDT,

Case No. 96-CV-1892

Petitioners

and

CITY OF WAUKESHA and CITY OF  
BROOKFIELD,

Intervenors

---

DETERMINATION OF THE WISCONSIN DEPARTMENT OF ADMINISTRATION

---

June 4, 1999

## 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. sec. 66.016:

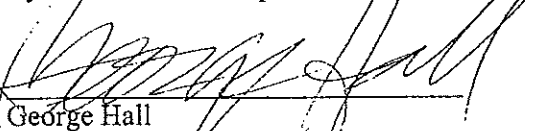
STANDARD 1 (a), Homogeneity and Compactness -- Not Met  
STANDARD 1 (b), Territory Beyond the Core - Met  
STANDARD 2 (a), Tax Revenue - Met  
STANDARD 2 (b), Level of Services - Met  
STANDARD 2 (c), Impact on the Remainder of the Town -- Not Applicable  
STANDARD 2 (d), Impact on the Metropolitan Community -- Not Met

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

The petition as submitted shall be denied.

Dated this 4<sup>th</sup> day of June, 1999.

By the Wisconsin Department of Administration:



George Hall  
Director of Municipal Boundary Review  
Wisconsin Department of Administration



Mark Saunders  
Deputy Counsel  
Wisconsin Department of Administration

cc: Christine Renner, Petitioners' Representative  
Erva Carlson-Schmidt, Alternate Petitioners' Representative  
Keith Henderson, Chairman, Town of Brookfield  
James W. Hammes, Attorney for Petitioners and for the Town of Brookfield  
Kathryn C. Bloomberg, Mayor, City of Brookfield  
Suzanne K. Schalig, City Attorney, City of Brookfield  
Carol Lombardi, Mayor, City of Waukesha  
Curt R. Meitz, City Attorney, City of Waukesha  
Cynthia Ernst, Clerk of Courts, Waukesha County  
F. Thomas Creeron, III, Assistant Attorney General, Wisconsin Department of Justice



Barbara Hartung, Clerk, Town of Brookfield  
Kris Schmidt, Clerk, City of Brookfield  
Thomas Neill, Clerk/Treasurer, City of Waukesha  
Sandra Salbashian, Clerk, City of Pewaukee  
Richard Farrenkopf, Clerk, Village of Menomonee Falls  
James Pellowski, Clerk, Village of Elm Grove  
William Bowers, Clerk, City of New Berlin  
M. Chris Swartz, Clerk, Village of Sussex  
Michaelene Knoebel, Clerk, Town of Waukesha  
Judith McDonald, Clerk, Village of Lannon  
Jeffery Musche, Clerk, Town of Lisbon

The territory comprising the proposed Village of Brookfield is part of the rapidly urbanizing western fringe of the Milwaukee metropolitan area, and includes all of the remaining remnants of the survey Township of Brookfield. Indeed the wave of metropolitan area urbanization, particularly from a residential/commercial perspective, has largely already moved west from this area. Development on remaining buildable lands with suitable soils is now occurring due to sewer extensions, enhanced road access, access to capital, and a booming retail trade area. As of the date of the petition to incorporate, the Town of Brookfield contained an estimated population of 6,243 persons, and occupies an estimated 7.33 square miles contained in seven separate areas comprised of isolated islands or peninsulas connected by narrow corridors. See following Maps 1 & 2, pp. 6 & 7, which portrays the proposed incorporation, and its' location in the metropolitan area.

The proposed incorporation either abuts or is surrounded by the City of Brookfield, the City of Waukesha, the City of New Berlin, the City of Menomonee Falls, the recently established City of Pewaukee, and a small area adjoining the Town of Waukesha. This petition for incorporation is entirely surrounded by the aforementioned incorporated jurisdictions (with the exception of approximately 80 acres comprising the Hidden Valley and Brookfield Estates III subdivisions, transferred in the early 1990's from the then Town of Pewaukee that lies in the E1/2 of the SE1/4 PLS Section 36, T7N, R19E, that immediately abuts the Town of Waukesha). Heavily wooded rolling hills and valleys (location of the existing environmental corridors), have made areas of the Town lying north and south of I-94, which traverses the Town from west to east, an attractive location for low-density residential subdivisions, since the 1960's. Because of its' central location with respect to regional transportation facilities, it enjoys a vibrant commercial core. All of these aspects will be discussed in greater detail later in this Determination.

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)

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

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

Pleasant Prairie also clarifies that the incorporation statute mandates reasonable standards in regard to homogeneity and compactness, "...and other applicable criteria. If those characteristics which are required by sec. 66.016 (1)(a), Stats., are not met sufficiently to result in a finding of reasonable homogeneity and compactness, findings in respect to the requirements of sec. 66.016 (1)(b) (territory beyond the core), and the public interest considerations of sec. 66.016(2) become irrelevant". (Ibid., at p. 341)

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

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

## ANALYSIS

### NATURAL AND POLITICAL BOUNDRIES

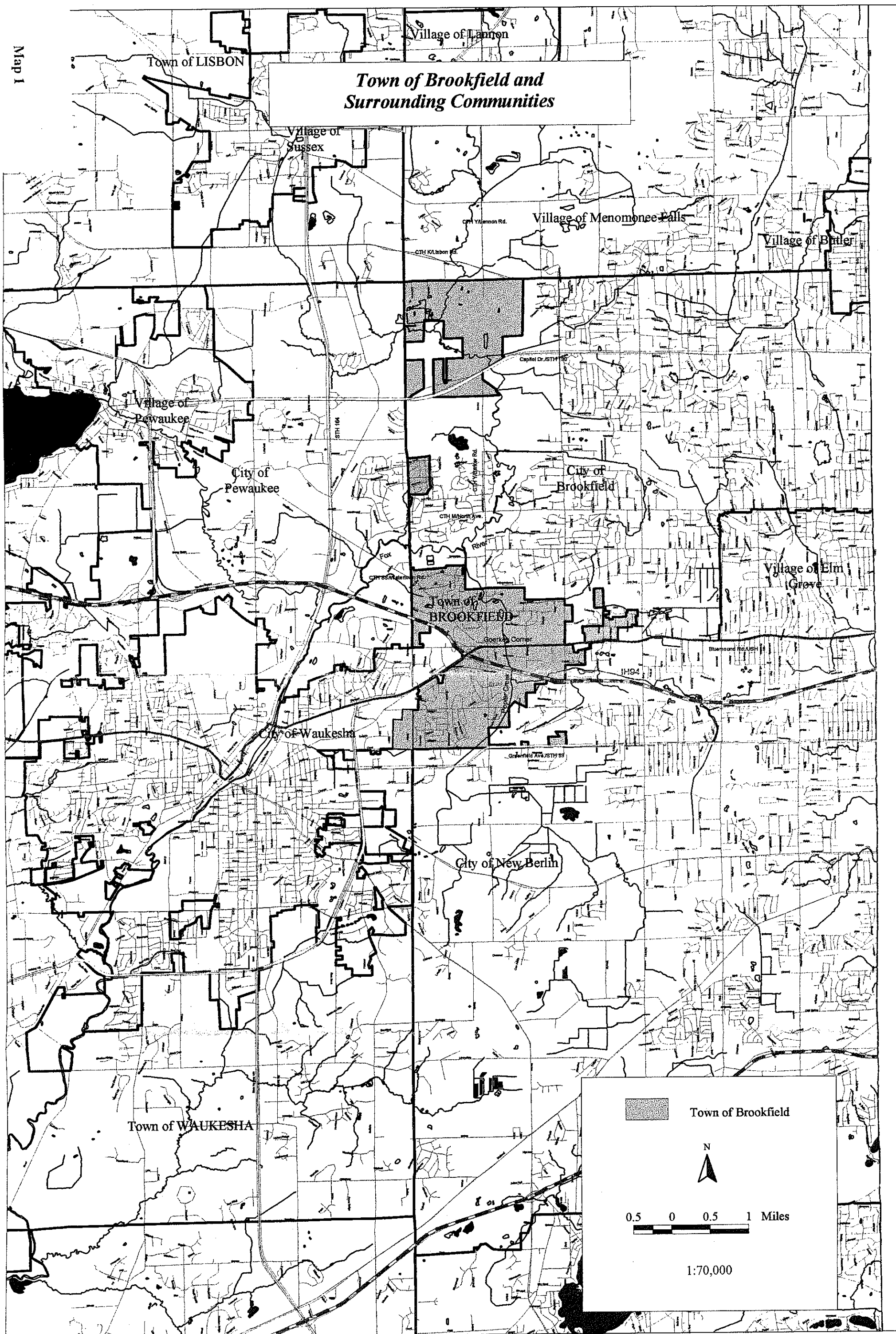
#### Surficial Geology

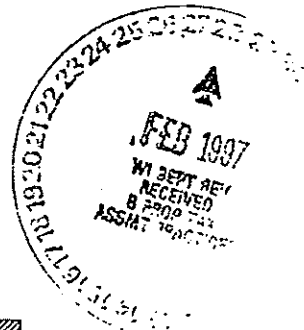
The core of the Town lying in the Goerkes Corners area contains pleistocene and recent (relatively speaking) glacial deposits of some 100-200 feet in thickness, and result in an elevation of from 900-1,000 feet – some 100-feet higher in elevation than other lands in this petition, and in the City of Brookfield. This elevated area extends to the west into the City of Waukesha, and is bounded to the west (in the City of Waukesha) by the Fox River, and to the east by Poplar Creek, which flows north through this southwest corner of the Town to its confluence with the Fox River west of Barker Road and south of North Avenue in the City of Brookfield. (See Map 1, p. 6) Deer Creek, associated small kettle lakes, and a large wetland complex – the Dousman Ditch – trending east-west, lying north of Blue Mound Road, all drain into Poplar Creek, and form the basis for several environmental corridors that are discussed in greater detail in following sections. At least for the southwest corner of the Town of Brookfield, the current Town-City of Brookfield border can be explained by the presence of these natural features, as the location of the current Town and City of Brookfield boundary tends to run through these environmental corridors except for the configuration of the boundary as it traverses the developed properties in the Blue Mound Road corridor in Public Land Survey (PLS) Section 28, Town of Brookfield.

Lying west of Poplar Creek along Greenfield Avenue (corresponding to the south limit line of PLS Section 32, Town of Brookfield) is a Town peninsula that extends along Greenfield Avenue for about 1/3 of a mile, and two isolated properties, of 4 and 24 acres respectively (the latter lies in the extreme southeast corner of PLS Section 32. These properties are part of the rolling, heavily wooded landscape described in the “Greenfield Avenue Corridor Plan (1996),” prepared for the cities of Brookfield and New Berlin by Camiros, Ltd. And Ayres Associates.

In PLS Section 18, Town of Brookfield, there are two isolated residential areas, the largest includes Holly Crest and Gaywood estates, complete with platted streets and lots, totalling approximately 90 acres, the other area is a much smaller residential parcel of 1.8 acres fronting on Springdale Road. The relatively flat topography of these areas makes them indistinguishable from neighboring residential properties in the City of Brookfield and City of Pewaukee. These areas will be discussed in greater detail in the following sections.

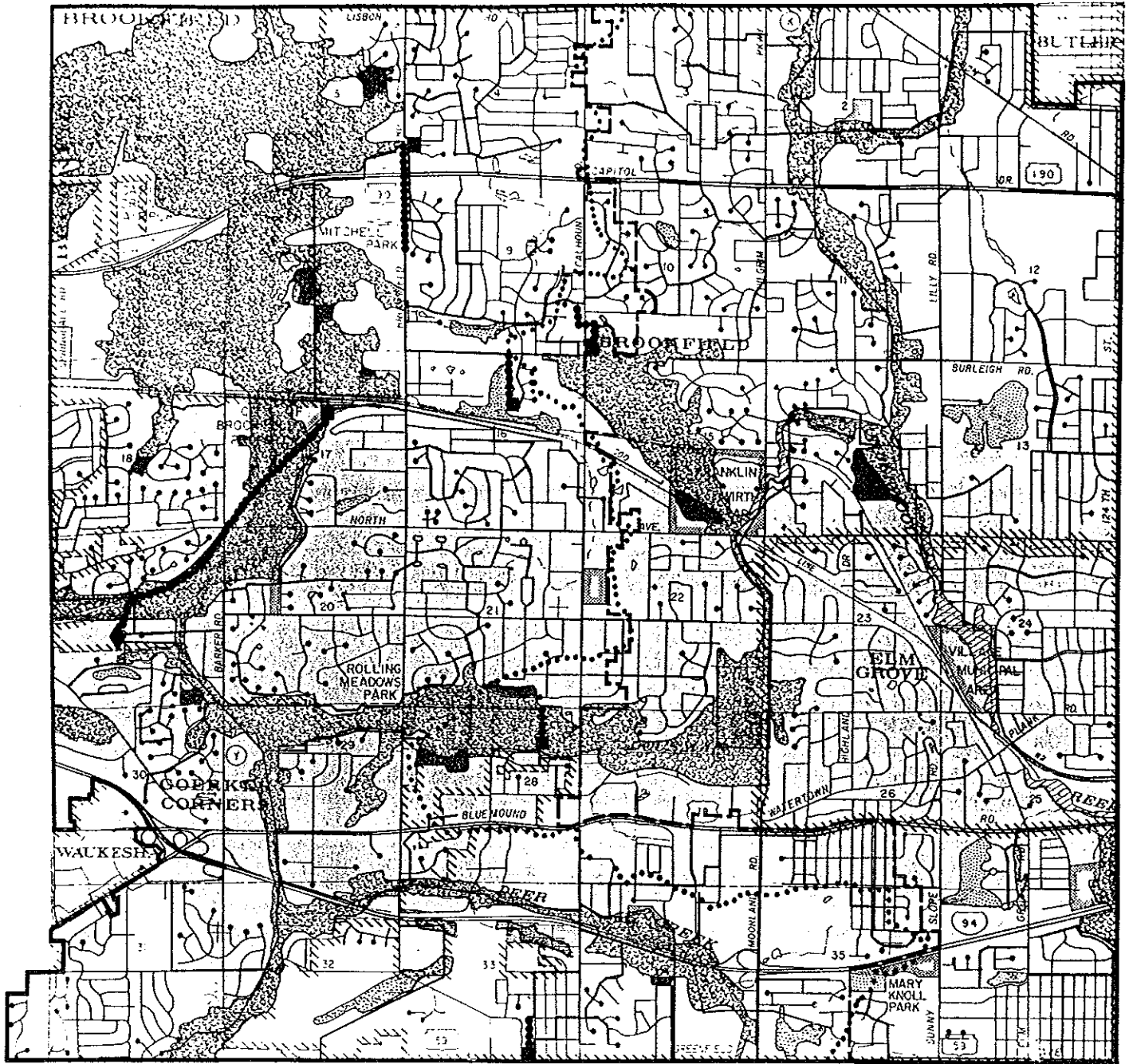
PLS Sections 5-7 also comprise lands included in the incorporation petition, and surround the privately-owned Capital Drive Airport that is part of the City of Brookfield (connected by a narrow corridor extending northward from city territory abutting the south side of Capitol Drive in PLS Section 7). With the exception of the Capitol Drive Airport (which sits on fill in the middle of a large wetland), and the higher ground on which Capitol Drive is situated, the lands surrounding the airport are primarily wetland drained by the Fox River, and are designated as a “Primary Environmental Corridor” (see Map 3, p. 8).





TOWN OF BROCKFIELD  
WAUKESHA COUNTY, WISCONSIN

## POST-PUBLIC HEARING BROOKFIELD/ELM GROVE SANITARY SEWER SERVICE AREA



Source: SEWRPC.

**Map 3 - Environmental Corridors  
and Natural Areas: SEWRPC**

## Soils<sup>1</sup>

### *Capitol Drive Area*

Commencing with petitioner's territory comprising the northwest corner of the Town of Brookfield, lands surrounding the Capitol Drive Airport contain the following major soil types:

Houghton (HtA, HtB): A muck soil that is erodable, very severe limitations for road subgrades, low bearing capacity (high shrink-swell potential, high water table, severe ability to accept on-site septic systems, and unstable (low bearing strength for foundations)) for residential-commercial-industrial foundations.

Palms (Pa): A muck-peat-loam that is highly erodable, low bearing capacity (high shrink-swell potential, high water table, severe ability to accept on-site septic systems, and unstable (low bearing strength for foundations)) for residential-commercial-industrial foundations.

Sawmill (Sg): A silty-clay-loam that has severe limitations for road sub-base, usually associated with high water tables; soil liquifies when wet, and subject to frost heave.

Sabewa (Sm): A silt-clay-loam usually associated with a high water table with moderate shrink swell potential, slight limitations for building foundations, but the association with high water table limits potential for residential-commercial-industrial foundations, subject to frost heave.

Although other soil types are present that are more suitable for road subbase, building foundations, and on-site septic systems, the above soil types present severe development limitations for probably 90% or more of the Capitol Drive area petitioned for incorporation. Table 1, p. 10, portrays in detail the soil types present in this area, and provides a visual explanation as to why existing and potential development is considerably restricted to lands abutting Capitol Drive and lands lying to the north between Capitol Drive and the airport runways and buildings -- much of which is built on fill (that would likely not be permitted under current Wisconsin Administrative Code sections NR115 and 116). Petitioners' Exhibit 2 (PDI Report), containing maps titled "Wetlands Classification Map," "Zoning District Map," "Conservancy District Map," for example, are largely consistent with the soil types and associations on Map 4, p. 11, portraying the aforementioned soil types and locations.

### *Springdale Road/Holly Crest and Gaywood Subdivisions*

This nearly fully developed residential area adjoining Springdale Road and lying north of North Avenue, is sited on the following primary soils and soil associations (See Map 5, p. 12)

Fox (FsA, FsB): A clay-loam associated with sand and gravel with moderate to slight limitations for road sub-base, and building foundations, erodable in sloping areas, slight limitations for on-site septic systems, moderate shrink-swell potential.

---

<sup>1</sup> Soils are characterized by petitioners in Exhibit 2 (PDI Report, page 18) on a map titled "Dominant Hydrologic Soil Groups by Subbasin," which characterizes permeability, infiltration and runoff potential. In order to appreciate the distinctions that will later be drawn about the nature and relationships of the 7 parts of the town to itself, the natural environment, and the surrounding metropolitan community, it is necessary to explore the soils problem in greater detail. The following information is taken from the USDA, Soil Conservation Service, Soil Survey of Milwaukee and Waukesha Counties, Wisconsin (1971); the SEWRPC, Waukesha County Agricultural Soil Erosion Control Plan (Community Assistance Planning Report No. 159, June, 1988).



SOIL LEGEND

The first capital letter is the initial one of the soil name. A second capital letter, A, B, C, D, E, or F, shows the slope. Most symbols without a slope letter are those of nearly level soils or land types, but some are for soils or land types that have a considerable range in slope. The final number, 2 or 3, in a symbol indicates that the soil is eroded or severely eroded.

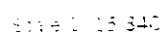
SYMBOL	NAME	SYMBOL	NAME	SYMBOL	NAME
Ac	Adrain muck	HmB	Hochheim loam, 2 to 6 percent slopes	Na	Navan silt loam
Am	Alluvial land	HmB2	Hochheim loam, 2 to 6 percent slopes, eroded	Oc	Ogden muck
AsA	Ashkum silty clay loam, 0 to 3 percent slopes	HmC2	Hochheim loam, 6 to 12 percent slopes, eroded	OmB	Oshtemo loamy sand, 1 to 6 percent slopes
AzA	Aztalan loam, 0 to 2 percent slopes	HmD2	Hochheim loam, 12 to 20 percent slopes, eroded	OnB	Oshtemo sandy loam, 1 to 6 percent slopes
AzB	Aztalan loam, 2 to 6 percent slopes	HmE2	Hochheim loam, 20 to 30 percent slopes, eroded	OuB	Ozaukee silt loam, 2 to 6 percent slopes
		HoC3	Hochheim soils, 6 to 12 percent slopes, severely eroded	OuB2	Ozaukee silt loam, 2 to 6 percent slopes, eroded
BIA	Blount silt loam, 1 to 3 percent slopes	HoD3	Hochheim soils, 12 to 20 percent slopes, severely eroded	OuC2	Ozaukee silt loam, 6 to 12 percent slopes, eroded
BmB	Boyer loamy sand, 1 to 6 percent slopes	HoE3	Hochheim soils, 20 to 30 percent slopes, severely eroded	OuD2	Ozaukee silt loam, 12 to 20 percent slopes, eroded
BmC2	Boyer loamy sand, 6 to 12 percent slopes, eroded				
BnB	Boyer sandy loam, 1 to 6 percent slopes	HtA	Houghton muck, 0 to 2 percent slopes	Pa	Palms muck
BsA	Brookston silt loam, 0 to 3 percent slopes	HtB	Houghton muck, 2 to 6 percent slopes	Ph	Pella silt loam
				Pm	Pella silt loam, moderately shallow variant
CcB	Casco sandy loam, 2 to 6 percent slopes	JuA	Juneau silt loam, 1 to 3 percent slopes	PrA	Pistakee silt loam, 1 to 3 percent slopes
CcC2	Casco sandy loam, 6 to 12 percent slopes, eroded				
CcD2	Casco sandy loam, 12 to 20 percent slopes, eroded	KeA	Kane silt loam, 1 to 3 percent slopes	RkB	Ritchey silt loam, 1 to 6 percent slopes
CeB	Casco loam, 2 to 6 percent slopes	KIA	Kendall silt loam, 1 to 3 percent slopes	RkC2	Ritchey silt loam, 6 to 12 percent slopes, eroded
CeC2	Casco loam, 6 to 12 percent slopes, eroded	KnB	Kewaunee silt loam, 2 to 6 percent slopes	RkE	Ritchey silt loam, 12 to 30 percent slopes
CeD2	Casco loam, 12 to 20 percent slopes, eroded	KnC2	Kewaunee silt loam, 6 to 12 percent slopes, eroded	RIA	Ritchey silt loam, mottled subsoil variant, 1 to 3 percent slopes
CFC3	Casco soils, 6 to 12 percent slopes, severely eroded	KwA	Knowles silt loam, 0 to 2 percent slopes	Ru	Rollin muck, deep
CrC2	Casco-Rodman complex, 6 to 12 percent slopes, eroded	KwB	Knowles silt loam, 2 to 6 percent slopes	Rv	Rollin muck, shallow
CrD	Casco-Rodman complex, 12 to 20 percent slopes			Ry	Rough broken land
CrE	Casco-Rodman complex, 20 to 30 percent slopes	LmB	Lamartine silt loam, 1 to 4 percent slopes	SaA	St. Charles sandy loam, gravelly substratum, 1 to 3 percent slopes
CrF	Casco-Rodman complex, 30 to 45 percent slopes	Lo	Lawson silt loam	ScA	St. Charles silt loam, 0 to 2 percent slopes
CtB	Chelsea fine sand, 1 to 6 percent slopes	Lu	Loamy land	ScB	St. Charles silt loam, 2 to 6 percent slopes
CtD	Chelsea fine sand, 6 to 20 percent slopes	LyB2	Lorenzo loam, 2 to 6 percent slopes, eroded	SeA	St. Charles silt loam, gravelly substratum, 0 to 2 percent slopes
Cv	Clayey land	LyC2	Lorenzo loam, 6 to 12 percent slopes, eroded	SeB	St. Charles silt loam, gravelly substratum, 2 to 6 percent slopes
Cw	Colwood silt loam	LyD2	Lorenzo loam, 12 to 20 percent slopes, eroded	Sf	Sandy and gravelly land
				Sfb	Sandy lake beaches
DdA	Dodge silt loam, 0 to 2 percent slopes	MaA	Manawa silt loam, 1 to 3 percent slopes	Sg	Sawmill silt loam, calcareous variant
DdB	Dodge silt loam, 2 to 6 percent slopes	MeB	Markham silt loam, 2 to 6 percent slopes	ShA	Saylesville silt loam, 0 to 2 percent slopes
Dr	Drummer silt loam, gravelly substratum	Mf	Marsh	ShB	Saylesville silt loam, 2 to 6 percent slopes
		MgA	Marrinton silt loam, 1 to 3 percent slopes	ShB2	Saylesville silt loam, 2 to 6 percent slopes, eroded
EsA	Elliott silt loam, 1 to 3 percent slopes	MhA	Matherton sandy loam, 1 to 3 percent slopes	ShC2	Saylesville silt loam, 6 to 12 percent slopes, eroded
FaA	Fabius loam, 1 to 3 percent slopes	MmA	Matherton silt loam, 1 to 3 percent slopes	Sm	Sebewa silt loam
FmA	Fox sandy loam, 0 to 2 percent slopes	MoA	Mayville silt loam, 0 to 2 percent slopes		
FmB	Fox sandy loam, 2 to 6 percent slopes	MoB	Mayville silt loam, 2 to 6 percent slopes	ThA	Theresa silt loam, 0 to 2 percent slopes
FmC2	Fox sandy loam, 6 to 12 percent slopes, eroded	MtA	Mequon silt loam, 1 to 3 percent slopes	ThB	Theresa silt loam, 2 to 6 percent slopes
FnB	Fox sandy loam, loamy substratum, 2 to 6 percent slopes	MvB	Miami sandy loam, sandy loam substratum, 2 to 6 percent slopes	ThB2	Theresa silt loam, 2 to 6 percent slopes, eroded
FoA	Fox loam, 0 to 2 percent slopes			ThC2	Theresa silt loam, 6 to 12 percent slopes, eroded
FoB	Fox loam, 2 to 6 percent slopes	MvC2	Miami sandy loam, sandy loam substratum, 6 to 12 percent slopes, eroded		
FoC2	Fox loam, 6 to 12 percent slopes, eroded	MxB	Miami loam, sandy loam substratum, 2 to 6 percent slopes	VsA	Virgil silt loam, gravelly substratum, 0 to 3 percent slopes
FsA	Fox silt loam, 0 to 2 percent slopes	MxC2	Miami loam, sandy loam substratum, 6 to 12 percent slopes, eroded		
FsB	Fox silt loam, 2 to 6 percent slopes	MxD2	Miami loam, sandy loam substratum, 12 to 20 percent slopes, eroded	Wa	Walkill silt loam
FsC2	Fox silt loam, 6 to 12 percent slopes, eroded	MxE	Miami loam, sandy loam substratum, 20 to 30 percent slopes	WdB	Warsaw sandy loam, 2 to 6 percent slopes
FrB	Fox silt loam, loamy substratum, 2 to 6 percent slopes			WeA	Warsaw loam, 0 to 2 percent slopes
		Mzb	Montgomery silty clay loam	WeB	Warsaw loam, 2 to 6 percent slopes
Gd	Gilford loam	MzdB	Morley silt loam, 2 to 6 percent slopes	WeC2	Warsaw loam, 6 to 12 percent slopes, eroded
Gf	Granby fine sandy loam	MzdB2	Morley silt loam, 2 to 6 percent slopes, eroded	WhA	Warsaw silt loam, 0 to 2 percent slopes
GrA	Grays silt loam, 0 to 2 percent slopes	MzdC2	Morley silt loam, 6 to 12 percent slopes, eroded	WmA	Wasepi sandy loam, 1 to 3 percent slopes
GrB	Grays silt loam, 2 to 6 percent slopes	MzdD2	Morley silt loam, 12 to 20 percent slopes, eroded	Ww	Wet alluvial land
GrB	Griswold silt loam, 2 to 6 percent slopes	MzFA	Mundelein silt loam, 1 to 3 percent slopes		
GrC2	Griswold silt loam, 6 to 12 percent slopes, eroded	Mzg	Muskego muck		
GwB	Griswold silt loam, mottled subsoil variant, 2 to 6 percent slopes	Mzk	Mussey loam		
HeA	Hebron loam, 0 to 2 percent slopes				
HeB	Hebron loam, 2 to 6 percent slopes				
HeC2	Hebron loam, 6 to 12 percent slopes, eroded				

Table 1 - Soils Legend

Soil map constructed 1969 by Cartographic Division, Soil Conservation Service, USDA, from 1963 aerial photographs. Controlled mosaic based on Wisconsin plane coordinate system, south zone, Lambert conformal conic projection, 1927 North American datum.

(Continued on next page)





**Map 4 – Soils Map, Capitol Drive Area**

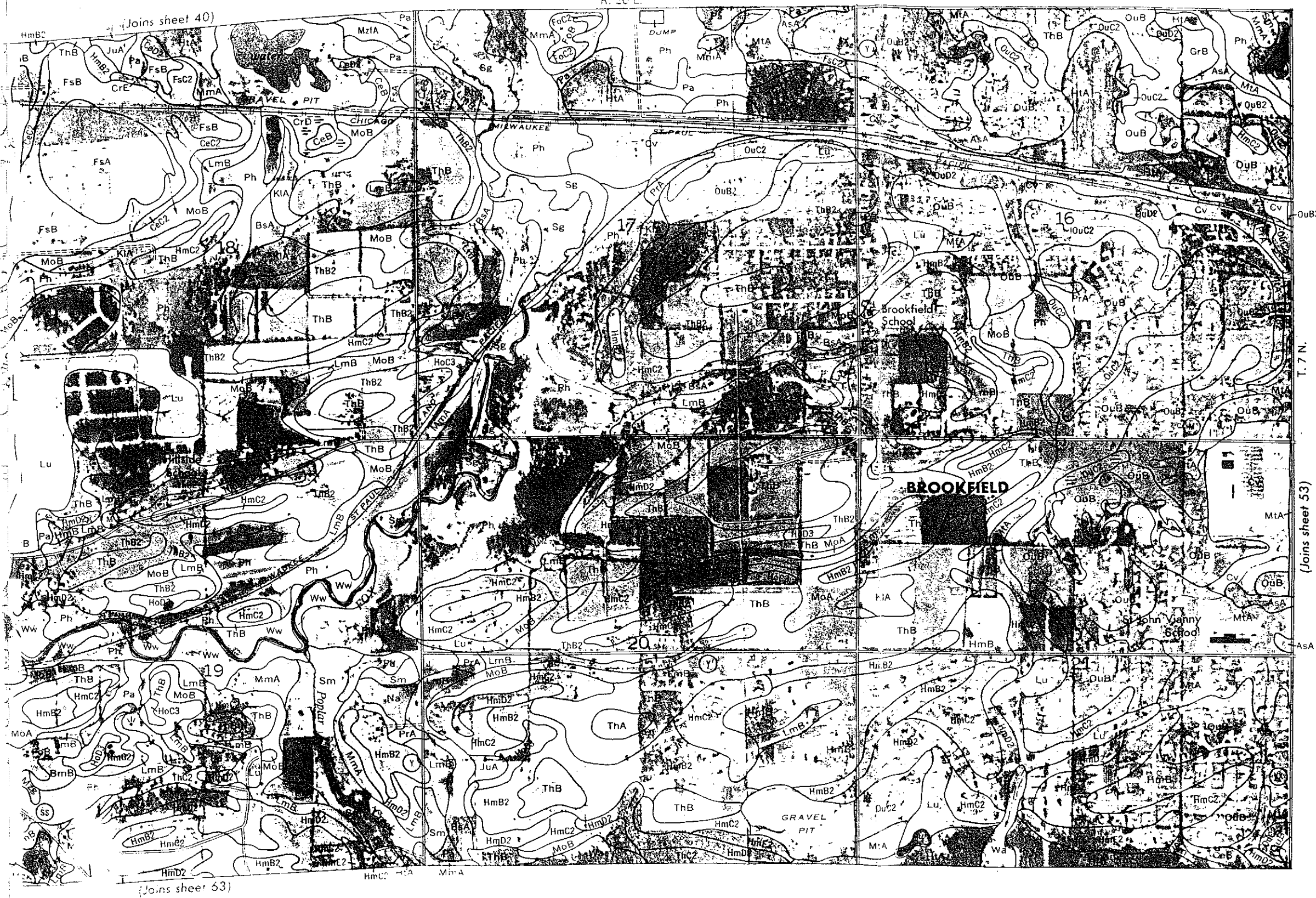
N

R. 20 E.

T. 7 N.

(Joins sheet 53)

(Joins sheet 53)



Scale 1" = 34'

Map 5 - Soils Map, Holly Crest/Gaywood Subdivisions Area

"Loamy land" (Lu): No suitability characteristics noted in the Soil Survey of Waukesha County....

Pella (Ph): A silty-clay-loam with severe bearing capacity for road sub-base, low bearing capacity for foundations, severe potential for on-site septic systems, associated with high water tables, and has low bearing capacity when wet, with high shrink-swell potential, subject to frost heave.

#### *Goerkes Corner Area*

This southwest corner of the Town of Brookfield contains Poplar Creek and Deer Creek (south of I-94), and the Dousman Ditch Corridor (lying north of, and parallel to, Blue Mound Road) which flow from the east and drain into Poplar Creek as it flows north to meet the Fox River.

Approximately 95% of this area, which includes the I-94/Blue Mound Road interchange area, has been developed to commercial and residential uses, except for isolated parcels (see Petitioners' Exhibit 2 (PDI Report, map characterizing "Potentially Developable Lands," page 22) and areas associated with the following principal and related problematic soils (see Map 6, p. 14):

Houghton (HtA, HtB): A muck soil that is erodable, very severe limitations for road subgrades, low bearing capacity (high shrink-swell potential, high water table, severe ability to accept on-site septic systems, and unstable (low bearing strength for foundations) for residential-commercial-industrial foundations.

Montgomery (Mzb): A silty clay loam unsuitable for road sub-base due to high shrink-swell potential, association with high water table presents severe limitations for septic systems because of low permeability, and has severe limitations for building foundations, due to low bearing capacity when wet.

Ogden (Oc): A muck and peat soil with severe potential for road sub-base, associated with high watertable, severe limitations for foundations due to high shrink-swell potential, low bearing capacity when wet, and severe limitations for on-site septic systems.

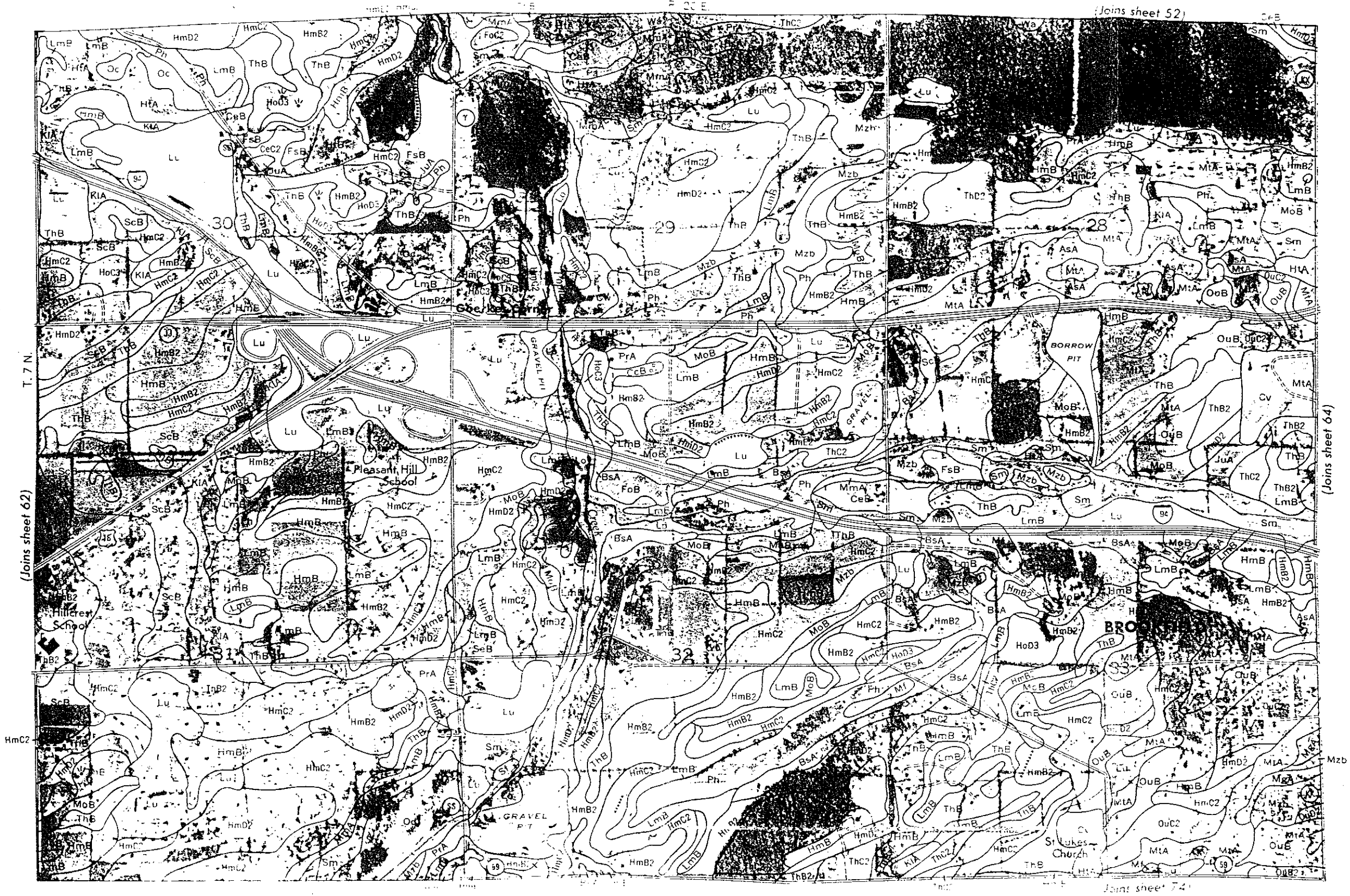
Sabewa (Sm): A silt-clay-loam usually associated with a high water table with moderate shrink swell potential, slight limitations for building foundations, but the association with high water table limits potential for residential-commercial-industrial foundations, subject to frost heave.

The remaining soil mosaic portrayed on Map 6, p. 14, is complex and highly variable, and for the most part contains soil types suitable for road subbase and residential/commercial foundations. This area is nearly completely developed outside of the designated environmental corridors.

#### Wetlands, Environmental Corridors, and Critical Species

Map 3, p. 8, portrays the adopted environmental corridors and natural areas within the proposed village area as designated by the SEWRPC. The boundaries of these corridors have been refined following public comment at the time the existing sanitary sewer service area was established for the Town and City of Brookfield, and the Village of Elm Grove (see SEWRPC, Sanitary Sewer Service Area for the City and Town of Brookfield and the Village of Elm Grove (Community Assistance Planning Report No. 109, November, 1991).





Map 6 - Soils Map, Goerkes Corners Area

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.

As portrayed by Map 3, p. 8, with one exception, all of the designated environmental corridors within the petitioned territory are "primary" environmental corridors. "Primary" environmental corridors must achieve a minimum point score relating to natural resource characteristics and habitat value, and be at least 400 acres in size, a minimum of two miles in length, with a minimum width of 200 feet. Primary environmental corridors nearly surround the Capitol Drive Airport in Sections 5-7, Town of Brookfield, and form most of the northern boundary of the Goerkes Corners portion of the petitioned territory, as well as the southeast border in Section 32, Town of Brookfield

A "secondary" environmental corridor (a corridor that, briefly, achieves a point score of 10, contains a minimum area of 100 acres, and has a minimum length of one mile) nearly surrounds as well as partially overlays, the isolated 24-acre petitioned territory abutting Greenfield Avenue in the SE 1/4 of Section 32.

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 other land uses and 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 3, p. 8, also indicates the location of important isolated natural areas. There is only one isolated natural area either entirely or partly within the proposed village (SW1/4 of Section 9).

#### *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 environmental corridors which support endangered, threatened, or rare plant or animal species.<sup>2</sup> With the exception of the "Brookfield Swamp," the "Brookfield Maple Forest" (a high-quality southern mesic forest-type), there are no critical habitat areas mentioned in the SEWRPC, Regional Natural Areas Plan (Planning Report No. 42, 1997). The Wisconsin Department of Natural Resources, Bureau of Endangered Resources has identified two critical species of concern; the Blanding's turtle (*Emydoidea blandingii*), and Butler's garter snake, State of Wisconsin threatened species, and endangered species, respectively.<sup>3</sup> Within the territory proposed for incorporation, no other critical habitat needs beyond the existing designated environmental corridors have been identified for these species.

---

<sup>2</sup> SEWRPC, "Regional Natural Areas Plan Draft" *Newsletter* Vol. 37, No.1, (Waukesha, WI: SEWRPC, January-February 1997).

<sup>3</sup> Personal communication and check of the Natural Heritage Inventory data base, Elizabeth Spencer (WDNR Bureau of Endangered Resources) to George Hall, May 25, 1999).

### *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 Waukesha County was designated as an ozone non-attainment area. Waukesha 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>4</sup> Auto emissions testing and reformulated gasoline are also requirements in non-attainment areas.

### *Properties of Historical, Archaeological or Architectural Significance*

The 1993 National Register of Historic Places lists one historic site located in the Town of Brookfield. The Gredler-Gramins House, located in Public Land Survey (PLS) Section 32, was listed on the National Register of Historic Places in 1980.

### Present and Potential Transportation Systems

#### *Existing Transportation Facilities and Local Plans*

The Town currently has jurisdiction and maintenance responsibility for approximately 34 miles of roadways.<sup>5</sup> The Wisconsin Department of Transportation has classified these roads using the Functional Classification system of Major Roadway (>1,000 Average Daily Traffic – ADT); Minor Roadway (<1,000 ADT); Local Roadway (<500 ADT); and Low Use Roadway (Cul-de-Sacs/Dead Ends).<sup>6</sup> The Goerkes Corners area along Bluemound Road within the Town, just east of I 94, is often clogged with traffic. This section of Bluemound Road and the section passing through the City carry the heaviest traffic volumes of any area roads. Drivers using this route are typically heading to and from IH 94 and many also use the route as their primary throughway. For a road map of the Town see Map 7, p17, and the Average Daily Traffic counts for 1998 on Maps 8 and 9, pp. 18.

Most portions of the Town are accessible on either a town, city, or county road (Map 7, p. 17). However, there is no direct Town-controlled access to the northern, Capitol Drive portion of the Town. This area primarily consists of wetlands and the Capitol Drive airport, and developing commercially-zoned properties fronting Capitol Drive. The airport is accessible from Springdale, Barker, and Brookfield Roads – all or part of which are in the jurisdiction of the City of Brookfield, and Capitol Drive, which is a State Trunk Highway. The small number of residences and farms on the northern border of this area can be accessed from other parts of the Town by traveling north on Brookfield Road to Weyer and Lisbon Roads lying in the City of Menomonee Falls (Map 7, p. 17). The City of Brookfield maintains Barker and Brookfield Roads as City arterials in order to retain jurisdiction to assure compatibility of the streetscape and pavement width with abutting residential subdivisions. The City of Brookfield assumes fiscal responsibility for roadway maintenance and improvement costs (which are partially offset through the state transportation aid formula).

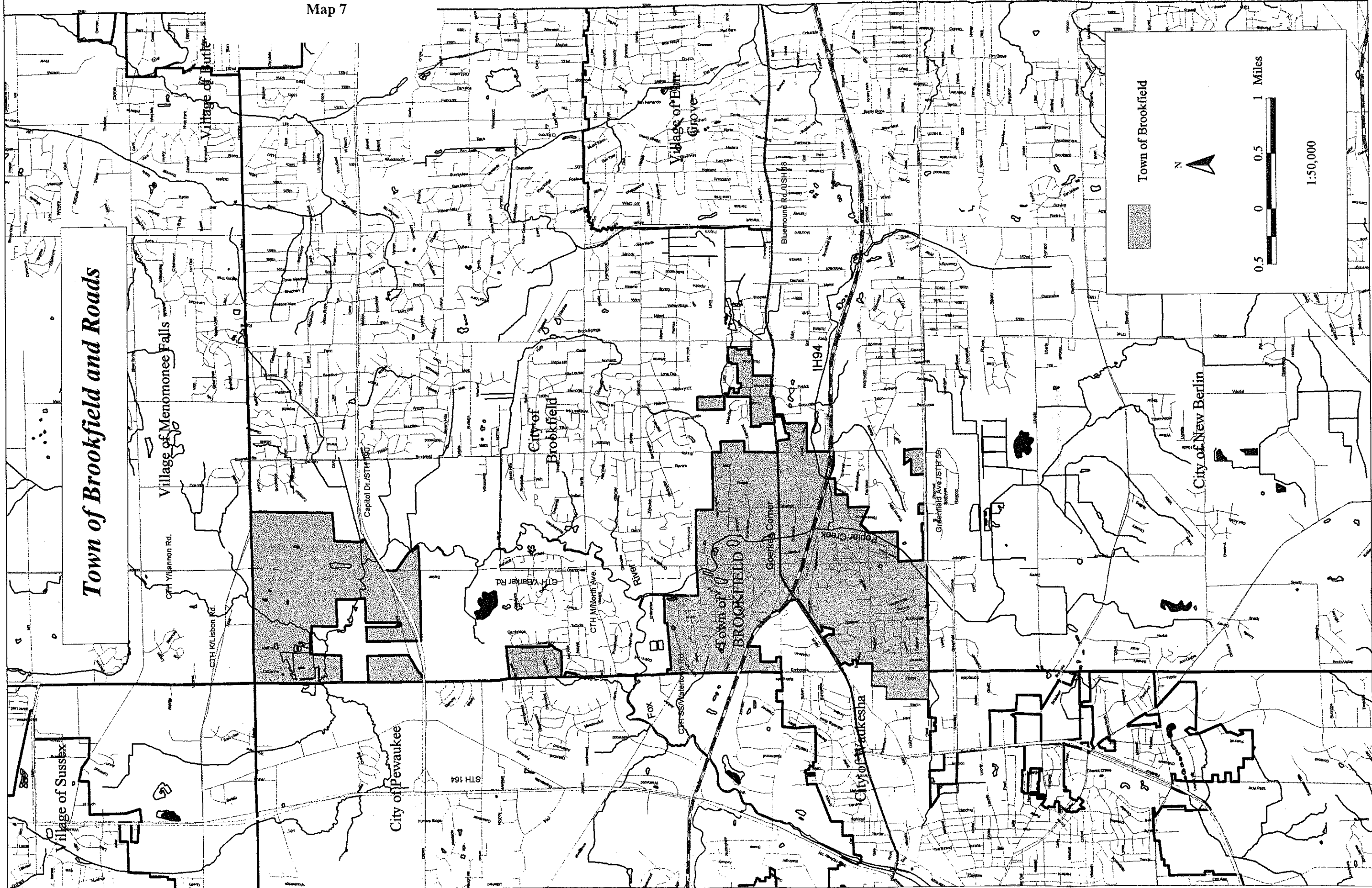
---

<sup>4</sup> WDNR, *Expanding Industry in Wisconsin: A guide to meeting air quality requirements*, 1997, p. 28.

<sup>5</sup> Ruekert & Mielke, Pavement Management System for the Town of Brookfield, March 10, 1999, p. 2.

<sup>6</sup> Ibid, p. 3.

Map 7



*Town of Brookfield and Roads*

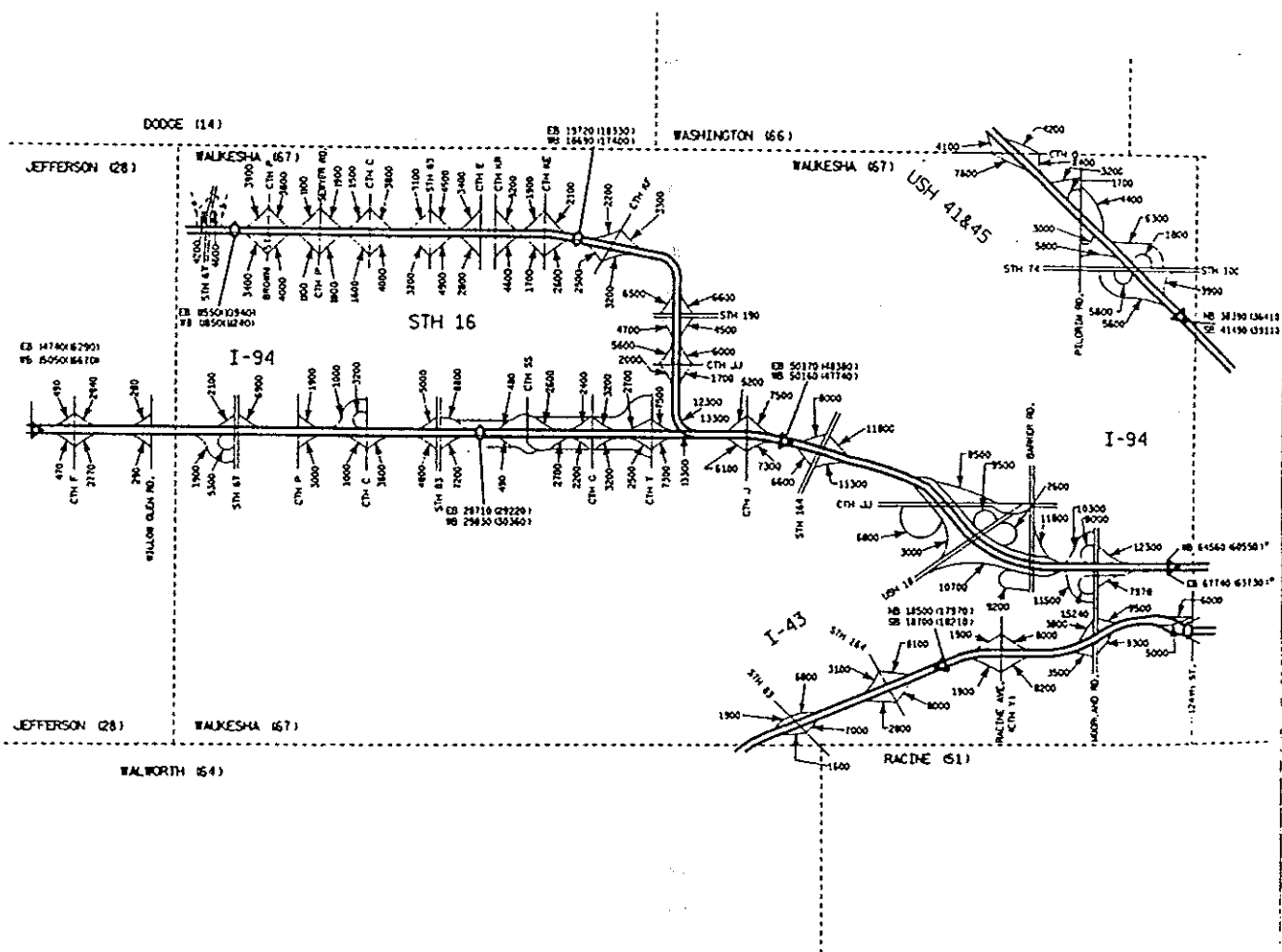
Town of Brookfield

N

0.5 0 0.5 1 Miles

1:50,000

N



1998  
**WAUKESHA**  
RAMPS

0000 = Average Weekly Traffic  
Ramp Counts Are Not Axle Adjusted  
(0000) = AADT

PREPARED BY DISTRICT 2

Map 8 - Waukesha Highway  
Ramps, 1998: WisDOT





Transportation within the southern portion of the Town is internally oriented due to a high prevalence of dead-end cul-de-sacs and limited access to Major Arterials such as Bluemound Road, Greenfield Avenue and IH 94.

The Town Highway Department includes five full-time employees and one part-time employee: one superintendent, one crew chief, three laborers and one part-time laborer. All highway personnel are on-call 24 hours per day. The Highway Department maintains all Town roads, and performs snowplowing, sanding, sweeping, patching, grass-cutting, signs, striping; and maintenance of culverts, drainage ditches, highway equipment, Town buildings and Town grounds (Exhibit 2, p. 7).<sup>7</sup>

This is the first year that the Town will use the Wisconsin Department of Transportation's ROADWARE program and the Pavement Surface Evaluation and Rating (PASER) system to evaluate road conditions and determine an improvement schedule. In previous years, the Town assessed road conditions and propose improvements on an annual basis. With PASER, the Town develops a multi-year treatment program for the road network based upon specified budgets.<sup>8</sup> The final recommendation assumes an expenditure each year of \$275,000 over a five-year period.<sup>9</sup>

The maintenance of Springdale Road presents difficulties since portions of it are within the various jurisdictions of the Town, and the Cities of Pewaukee, Waukesha and Brookfield. The Town is only responsible for maintaining the portions which are included within its borders (Map 7, p. 17). Springdale Road's centerline is also the western border for the Town. Barker Road (CTH "Y") within the Town, is controlled and maintained by Waukesha County. The same is true for Weyer Road (CTH "K"), which forms the northern border of the Town. Capitol Drive is STH "190" and Bluemound Road is STH "18" therefore both of these are controlled and maintained by the State of Wisconsin. There was one instance in 1992 when the Town worked with the state through cost-sharing on improving Bluemound Road, and also participated in the recent widening and other improvements added to South Barker Road (commencing with the intersection with Blue Mound Road, extending south nearly to the Town line).<sup>10</sup>

*Bikeway Master Plan, Town of Brookfield (Exhibit 26)*<sup>11</sup>

The Town and SEWRPC initiated the Bikeway Master Plan using a grant from the Wisconsin Department of Transportation. The planning process included coordination with the bikeway planning processes for the surrounding Cities of Brookfield, Pewaukee, Waukesha and New Berlin. Goals of the plan include connecting neighborhoods within the Town, connecting the separate portions of the Town and improving access from the Town to surrounding communities. The plan includes some transportation improvement projects such as the bike path from Davidson Road to Pleasant Hill School. To date, it is the only Town bicycling project from either of the two plans that has been completed (see Appendix 1 for a complete listing of bike projects and a map from the Bikeway Master Plan).

<sup>7</sup> Planning and Design Institute, Inc., Town of Brookfield Incorporation Study, October 1998, p. \_\_\_\_.

<sup>8</sup> Ruekert & Mielke, p. 2.

<sup>9</sup> Ibid, p. 11.

<sup>10</sup> Personal communication with Barbara Hartung, town of Brookfield Clerk, June, 1, 1999.

<sup>11</sup> Petitioner's Exhibit 26: Landscape Architects, Inc., Town of Brookfield Master Plan (Wisconsin Department of Transportation Project I.D. 2721-01-00, February 1997).

The Bikeway Master Plan proposes achieving access to the northern section of the Town with local and regional bikeways through the City of Brookfield. The Gaywood Estates subdivision on the central eastern edge of the Town will be accessed along Springdale Road on a path built jointly by the City and Town. Poplar Creek and its surrounding floodplain bisect the Town south to north. The floodplain is a broad open space with wetlands and the off-road Poplar Creek Bike Path is intended to run along the Creek and connect the north and south parts of the Town. Building the Poplar Creek Bike Path would involve the cooperation of private landowners and the Wisconsin Department of Natural Resources. To connect the eastern and western parts of the Town, a bike path and bridge has been proposed to connect Janacek Road to Watertown Road; a bike path connector between Wray Park to the proposed Regional Fox River Bike Path; and a bike path to connect southeast corner of the Town to the Poplar Creek Bikeway and by extension, access to most of the Town on bike paths (Appendix 1).

#### *Master Plan, City of Brookfield*

The Master Plan areas for the City of Brookfield identifies land use proposals that have transportation implications for both the City and the Town of Brookfield. In particular, the Greenfield Avenue Corridor Plan affects both the City and Town of Brookfield and the City of New Berlin since Greenfield Avenue borders all three areas. The plan proposes annexation of remaining Town lands (described in greater detail in the *Previous Political Boundaries* section) and future residential development of vacant land at Brookfield Road with limited access onto Greenfield Avenue. The plan also proposes to add more depth to the parcels in the Town between Greenfield Avenue and the gravel pit just to the north to create sufficient size for frontage road setbacks.

In addition to the regional transportation plan and the Transportation Improvement Plan (TIP), the City of Brookfield worked with residents, a consultant and Amtrak to devise the, "Preliminary Design Study: Brookfield Road, Amtrak Depot, Brookfield Village." The City has used the study to make streetscape design improvements to the Village area. New design guidelines have helped attract new commercial development that extends to the street by infilling parking lots in front of stores. Some parking has been moved on the street, off to the side, or to the rear of buildings. Sidewalks with curb and gutter have also been installed along with street trees and benches in appropriate locations.<sup>12</sup>

#### *Transportation improvements*

The final recommendations in the regional transportation plan and transportation improvement program include a number of projects that will affect the Town and City of Brookfield (see Appendix 2).

*The following projects from the annual element of the 1997-1999 Transportation Improvement Program were recently completed:*

- Construction of Poplar Creek Bikeway from S. Brenner Dr. to Water Tower Boulevard in the Town of Brookfield.
- Reconstruction with additional lanes of STH 59 from the Poplar Creek bridge to Johnson Road in the City of New Berlin (0.56 miles) will benefit traffic traveling from the Cities of New Berlin and Brookfield into the Town and also through the Town to the City of Waukesha.

---

<sup>12</sup> Personal communication with Kathleen Cady, City of Brookfield Director of Economic Development, April 6, 1999.

- The reconstruction with additional lanes of Barker Road from STH 59 to IH 94 (1.00 mile) is entirely within the Town and helps to improve access from I-94 into the southern portion of the Town and also improves traffic flow from this southern section of the Town to the northern portion.
- The engineering, design and construction of a bike lane from Davidson Road to Pleasant Hill School in conjunction with the reconstruction of Barker Road and other arterials (0.4 miles).

#### *Transportation Section Conclusion*

If the Town incorporates, it would continue to maintain and improve its system in a similar manner. One of the more problematic transportation issues for the Town is the difficulty of traveling between the northern portion that is located in Sections 5 & 6, and the other portions of the Town. Springdale Road and Barker Road, the two major roads leading to the northern part of the Town, both end at Capitol Drive. The only routes that take travelers to the northern border of the Town and into the northern part of the Town require traveling east into the City of Brookfield or west into the City of Pewaukee, then north and then back west or east to the Town. This creates access problems for all travelers and is especially a problem for police and fire protection services. The SEWRPC regional transportation plan includes a proposal to extend Barker Road through the northern portion of the Town. If implemented, this could alleviate the disjointed roadway system between the northern and southern portions of the Town, and improve access.

There is no discernible difference between the transportation systems of the Town and City of Brookfield. There is little difference in traffic patterns due to relatively similar development patterns in both municipalities. Subdivision design for both areas primarily includes long winding roads dead-ending in cul de sacs. This pattern forces vehicles to converge onto a grid of collector streets that often become overloaded with traffic. Along commercial strips such as Capitol Drive and Bluemound Road, there are few access points and in many cases, it is difficult to get from one store to the next. Customers must exit parking lots onto the heavily traveled Bluemound Road in order to enter adjoining lots.

In both areas, the motor vehicle is the most convenient and often the only mode of transportation. Pedestrian, bicycle and public transportation access is very limited. The Town has plans to improve bicycle transportation as noted within its Bicycle Master Plan. The plan proposes to connect neighborhoods within the Town, connect separate portions of the Town and improve access from the Town to surrounding communities. To date the only project implemented from this plan is the bike path from Davidson Road to Pleasant Hill School.

SEWRPC's regional transportation plan and transportation improvement program propose a number of public transportation improvements including a commuter train line that would pass through the City and Town of Brookfield with endpoints in Watertown and downtown Milwaukee, and rapid busway service to pass through both the City and Town of Brookfield. The SEWRPC plans and the Town's road program include many different road improvements that should help to facilitate traffic flow through heavily congested areas.

If the Town incorporates, there would be little to no impact on the transportation system. An incorporated village would continue to maintain and improve its system in a similar manner as the Town. The Town and City of Brookfield could still jointly apply for WisDOT grants and cooperatively plan for various road corridors.

#### Previous Political Boundaries and Boundaries of School Districts

The City of Brookfield incorporated in 1954 and annexed territory west of the City during the 1950's and 1960's, when most of the current boundaries between the City and the Town were established. In contrast to the extensive annexation activity of the late 1950's and 1960's – which saw the City reaching Springdale Road, the boundaries between the City and the Town of Brookfield have been relatively stable ever since. Petitioner's Exhibit 20, and City of Brookfield Exhibit 28 are nearly identical maps that highlight the sequence, ordinance number, and date of annexations occurring subsequent to incorporation of the City of Brookfield.

The remaining Town of Brookfield consists of seven isolated areas (see Map 2, p. 7). The petitioners seek the incorporation of all seven isolated areas.

#### *Previous Political Boundaries*

Only a few major annexations have occurred since the 1980's, including annexations to eliminate Town islands; these recent annexations are listed in following Table 3. In 1983, territory north of Capitol Drive and east of Springdale Road was annexed to attach the Capitol Airport to the City for service reasons (which have not fully materialized). Territory was annexed south of Capitol Drive in PLS Sections 7 and 8 in 1988 and 1990, in order to establish Mitchell Park. Exhibits 20 and C-28 illustrates the history of annexations to the City of Brookfield that have established the current boundaries with the Town. A series of wetlands (included in designated environmental corridors) roughly demarcate current boundaries between the City and the Town of Brookfield for the Goerkes Corners area, with the exception of where the boundary traverses the developed/developing Blue Mound Road corridor. These wetlands, described previously in *Natural Boundaries*, lie along Deer Creek and Poplar Creek, and the Dousman Ditch Corridor. These wetlands follow the main stem of the Fox River north and form a broad wetlands area that begins just north of North Avenue and includes most of the northern Capitol Drive area of the Town, as well as parts of the City south and east of the Capitol Airport area of the Town (see Map 10, p. 24).

The following paragraphs discuss the boundaries of each of these 7 parts in greater detail (as shown on Map 2, p.7) :

#### *Goerkes Corners*

The historic Goerkes Corners area (and the core of the remaining Town of Brookfield) includes the I-94/Blue Mound Road interchange, Blue Mound Road corridor, and consists of three separate pieces. The largest segment is 3.67 square miles in area, the other areas consist of two isolated tracts of 4 and 24 acres abutting Greenfield Avenue. The northern limit line of this area loosely follows the Fox River and Dousman Ditch environmental corridor area eastward from Springdale Road to the east line of PLS Section 29, where the boundary then extends south to Blue Mound Road. The western boundary of this area is coterminous with Springdale road south to Blue Mound Road (USH 18) in the City of Waukesha, and abuts the recently incorporated City of Pewaukee and the City of Waukesha. Moving counter-clockwise, the City of Waukesha has annexed eastward into the Town of Brookfield, in PLS Sections 30 and 31, where the City has annexed most of the land in a triangle formed by the western PLS limit line of the Town of Brookfield, USH 18 on the south (with the exception of the Russ Darrow auto dealership and Steinhafel's furniture store annexations on the south side of USH-18, and interstate highway I-94 on the north. In the aforementioned "triangle," a small Town remnant (containing a Wal-Mart, and Beatrice Cheese) remains south of I-94, in the angle formed by the NE quadrant of the Springdale Road/CTH JJ intersection.

# **City of Brookfield Annexations 1988 to Present**

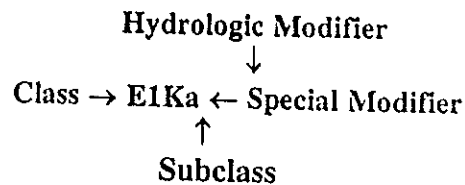
Date	Ordinance #	Description	Annexed From	Acres	Use
7/19/88	1231	Mitchell Park	Town of Brookfield	288.9	Park and Open Space
7/19/88	1232	Town of Brookfield along Wisconsin Avenue	Town of Brookfield	7.905	Commercial
9/5/89	1290	Four Town Islands	Town of Brookfield	82.229	Residential
6/19/90	1333	Annexation from Elm Grove & vice versa	Village of Elm Grove	NA <sup>1</sup>	Residential
8/7/90	1338	Mitchell Park West	Town of Brookfield	234.865	Park and Open Space
6/16/92	1408	Finger Property	Town of Brookfield	1.2	Vacant
3/15/94	1468	Kritselis/Mitchell Park East #2	Town of Brookfield	15.3	Park and Open Space
3/15/94	1469	Brookfield Road extended	Town of Brookfield	0.64	Right-of-Way
		<b>TOTAL ACRES</b>		<u><u>631.039</u></u>	

<sup>1</sup> Boundary Adjustment

8/24/98

Table 3 - Annexations Table:  
City of Brookfield

Table 2  
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

This is a high-contrast, black-and-white aerial photograph of a city grid, likely New York City. The image is heavily degraded with noise and artifacts, including large black rectangular redactions. Labels such as 'E2K', 'S3K', 'T3K', and 'KESHA' are visible on the map. The grid pattern of streets is prominent, with some areas appearing more densely built up than others. The overall quality is poor, resembling a low-resolution scan or a heavily processed image.

These wetlands were identified primarily by stereoscopic analysis of aerial photography taken no earlier than 1978 and transferred to this 1:24,000 photo enlargement. While the date of this photo enlargement and the dates of the interpreted aerial photographs may not be the same, the delineated wetlands on this enlargement reflect ground conditions existing as of the date of the interpreted aerial photography. Wetlands were identified on the aerial photographs based on vegetation, visible hydrology, and geography in accordance with a wetland classification system based on the U. S. Fish and Wildlife Service "Classification of Wetland and Deepwater Habitats of the United States." National Cooperative Soil Survey Maps, precipitation records, and other ancillary data were also utilized in determining wetlands. Copies of this wetland classification system description are available from the Wisconsin Department of Natural Resources, Bureau of Planning and from the Southeastern Wisconsin Regional Planning Commission (SEWRPC).

INFORMATION ON AERIAL PHOTOGRAPHY INTERPRETED	DATE	7-6-76	DATE	7-6-76	DATE	
	SOURCE	W. J. J. J.	SOURCE	W. J. J. J.	SOURCE	
	SECTIONS	15-76	SECTIONS	15-76	SECTIONS	
INTERPRETED:	DA	CHECKED	E. J. S.	APPROVED:		
COMMENTS: ...						



CONSIN DEPARTMENT  
= NATURAL RESOURCES  
BUREAU OF PLANNING





An approximately 80-acre portion of the Town of Brookfield extends west into the SE 1/4 of Section 36 of the PLS Town of Pewaukee, between Davidson Road and the southern edge of PLS Section 31, Town of Brookfield. This area was detached from the Town of Pewaukee in the early 1990's and the Town sought to eliminate isolated areas following a failed attempt to consolidate with the Village of Pewaukee in 1988.

Continuing counterclockwise, the southern boundary of the Goerkes Corners area is contiguous with the City of New Berlin, where no annexations from that City have ever occurred. The Town line follows the southern section line of Section 31 eastward. In this area, the Westbrooke Subdivision actually extends southward into the City of New Berlin, to Greenfield Road (STH 59) (this ~80-acre area is designated by the Regional Water Quality Management Plan, City of New Berlin (SEWRPC, 1999, Map 1, page 2), as being "tributary to the Fox River water pollution control center sewage treatment plant – which in plain language means that it is to be served by the Brookfield sewage treatment facility). A relatively small, fairly narrow area (the property is not sufficiently deep as to allow for development with appropriate setbacks, and for the necessary widening of Greenfield Road) of the Town of Brookfield extends eastward from Barker Road along Greenfield Road for about ¼-mile. Two smaller tracts lie further east on Greenfield Avenue and are isolated from the remainder of the Town. The smaller area, again with shallow depth, lies just east of Avondale Drive and is about 4 acres in size, the larger 24-acre parcel lies adjacent to a planned extension of Brookfield Road to intersect with Greenfield Road (in 1999). This area is discussed in some detail in the Greenfield Avenue Corridor Plan, Prepared for the Cities of Brookfield and New Berlin (Camiros, Ltd. and Ayres Associates, December 13, 1996).

The Goerkes Corners area of the Town is totally bordered on the east by the City of Brookfield. The principal part of this Town area lies west of Brookfield Road, with additional acreage extending east of Brookfield Road into PLS Section 28, extending north of Blue Mound Road, that is connected by a narrow corridor extending northeast from the SW1/4 of PLS Section 28. Further north, a small piece of the Town lies directly east of Brookfield Road, and south of the Dousman Ditch environmental corridor. In this most easterly extension of the Town in the N1/2 of PLS Section 28, a section of Blue Mound Road between Fisperve Drive and Woelfel Avenue remains in the jurisdiction of the Town. This eastern-most area became functionally isolated from the rest of the Town by a series of annexations by the City of Brookfield between 1959 and 1970, and has been the site of several development discussions between the City and the Town of Brookfield.

#### *Springdale Road/Gaywood and Holly Crest Subdivision Area*

Two small single-family residential sections, lying along Springdale Road in the western ½ of PLS Section 18, make up the small middle section of the Town. The smallest area is only 1.8 acres. The larger 90-acre piece comprises two residential subdivisions, Gaywood Estates and Holly Crest. These subdivisions predate the surrounding residential development, and the City of Brookfield has annexed and platted residential subdivisions around these sections on the east and south (to the north along Springdale Road are the CP Rail tracks, and Gateway Center (Springdale Investments, LLC, and Capitol Ideal Development LLC). Local streets connect these two subdivisions to adjoining subdivisions of similar type and character located in the City of Brookfield. Residential subdivisions of similar character also lie immediately west across Springdale Road, in the newly incorporated City of Pewaukee. This 90-acre area is sewered and served by Town of Brookfield Sanitary District No. 4. The smaller 1.8-acre parcel to the south appears to be unsewered.

### *Capitol Drive Area*

The northern section of the Town consists of two isolated parts. The smaller part lies in the SW1/4 of PLS Section 6 and is also bounded on the west by Springdale Road. This piece is about 70 acres, and is surrounded by the City of Pewaukee and the City of Brookfield. The larger area is 999.17 acres, and is contiguous with the Village of Menomonee Falls to the north and the City of Pewaukee to the west, and the City of Brookfield both in the interior (due to the annexed Capitol Airport), and to the south and east. The central, southern, and eastern boundaries with the City of Brookfield were established using natural and man made features (Capitol Airport runways, facilities, and clear zones), including Capitol Drive (STH 190), and by defaulting to section and quarter-section lines where necessary. As identified in Exhibits 20 and C-28, portraying annexations to the City of Brookfield, Town territory south of Capitol Drive had been annexed all of the way to Springdale Road by 1962, and largely blocked in by 1990. Capitol Airport was annexed in 1988, but is not yet served by sewer from Sanitary District No. 4, although sewer is available from the Gateway West Commercial Center (the SW1/4 of PLS Section 7) whenever the Town agrees to cost-share and special assess the developable Town properties fronting Capitol Drive, immediately opposite from the commercial center.

The northern-most boundary of this Town area is the remaining PLS Township of Brookfield boundary with the Village of Menomonee Falls. This village, like the City of New Berlin, has not annexed into the PLS Township of Brookfield. Although there is an extensive wetland/environmental corridor surrounding the Capitol Airport on the north side, small tracts of developable land (some of which is currently cropped, or contains residential dwellings on Martha Court, Catherine Lane, and Lannon Road, all accessible from Weyer Road and Lisbon Road in the Village of Menomonee Falls) remain on the elevated, drier soils. This northernmost area is shown by SEWRPC (Sanitary Sewer Service Area for the City and Town of Brookfield and the Village of Elm Grove, SEWRPC, November, 1991, Map 7, page 21) as part of the Sanitary District No. 4 service area to be added in the year 2000. Logic and financial prudence would dictate that it be eventually served by the Village of Menomonee Falls, unless the airport is redeveloped for other commercial/residential uses (a possibility based on the Capitol Drive Corridor Study Number Two, City of Brookfield, April, 1999).

### Schools

The Town of Brookfield is served by two separate school districts. The majority of the southern portion (Goerkes Corners area) of the Town is within the Waukesha School District, except for portions of the Town in Section 28 and in the SE ¼ of Section 32. These portions lie within the Elmbrook School District. The boundaries of the school districts are shown in Map 11, p. 27

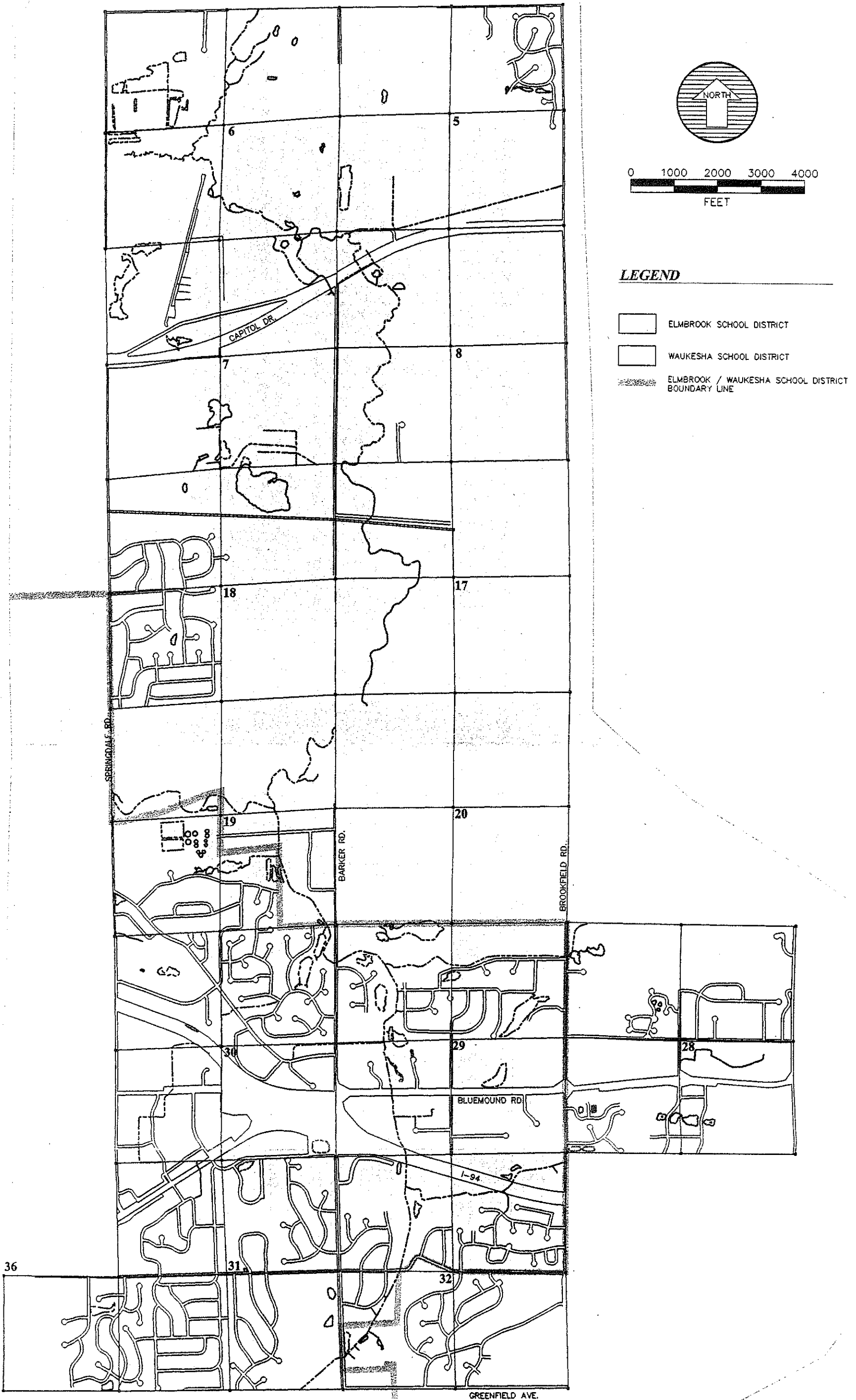
Data provided by the Waukesha School District shows that 969 public school-aged students residing in the Town of Brookfield were included in the school district attendance area. However, this data did not account for those children attending private schools or not enrolled in the Waukesha School District.<sup>13</sup> The Elmbrook School District records show that 109 students from the Town of Brookfield are enrolled in Elmbrook School District as of April, 1999, including early childhood and speech students.<sup>14</sup>

---

<sup>13</sup> Data provided by Alice Schultz, Census Office, School District of Waukesha. April 19, 1999

<sup>14</sup> Data provided by Beth Baldwin, Computer Services and Transportation, School District of Elmbrook. April 15, 1999

Map 11 - School District  
Boundaries: Hey & Associates,  
Inc.



There are two public schools in the Waukesha School District located within the Town of Brookfield. Pleasant Hill Elementary, located on South Barker Road, and Hillcrest Elementary, located on Davidson Road. Students in the Waukesha School District who reside in the Town of Brookfield attend Horning Middle School located in the northwest section of the City of Waukesha. These students attend either North High School or South High School, with the division line for attendance being Blue Mound Road.

Boundaries of municipal governments do not affect nor are they affected by school district boundaries. Although schools are an important determinant in molding community allegiance through scholastic, social, and recreational activities (topics which are treated in the following subheading entitled "Shopping and Social Customs"), the determination of their boundaries and school board issues are presently entirely separate from the process of municipal governance. (Pewaukee Incorporation Determination, 1991)

#### Waste Treatment and Water Supply Districts

The Town Sanitary District Number 4 currently owns and operates water treatment and delivery facilities, including a water tower, six wells, two reservoirs, and two treatment facilities (discussed in further detail in section 2(b) "Level of Services"). The Sanitary District has entered into an inter-municipal agreement for the provision of water with the City of Pewaukee. The Town board appoints all three sanitary district commissioners but the Sanitary District is a statutorily separate entity.

The Town of Brookfield Sanitary District Number 4 jointly operates a sewage treatment plant, built in 1976, with the City of Brookfield, the Town of Pewaukee, the Village of Pewaukee and the Village of Menomonee Falls. The Town sanitary district originally used approximately 8% of the treatment plant but now uses about 14% of the facility capacity. The Town sanitary district also has several inter-municipal agreements in place with surrounding municipalities for the provision and funding of sewer services.<sup>15</sup> The Town sanitary district, the City of Brookfield and the City of New Berlin have an agreement on the sharing of sanitary sewer expenses. The Town sanitary district also has a separate sewer and water agreement with the City of Brookfield.

Sanitary district Number 4 includes most of the Town. One section of approximately 30 acres off Lisbon Road and Weyer Road, in the northern section of the Town, is not included in the sanitary district. The sanitary district includes three parcels that have been annexed to the City of Waukesha, including approximately 3.5 acres of commercial property. Approximately 100 acres in the southeastern section of the Town are jointly served by the Town sanitary district and the City of Brookfield, because of the necessary location of gravity interceptors<sup>16</sup>

The current Town Sanitary District Number 4 was formed by the consolidation of several previous entities. In 1988, by referendum, the Westbrook District, south of I-94, combined with the Maple Ridge District, covering all areas north of I-94 except for the Hawthorne Ridge area. Later, Sanitary District Number 3 asked to be consolidated to form the current sanitary district boundaries. Gaywood and Holly Crest subdivisions were included in the sanitary district when it was consolidated. If the Town is incorporated, the sanitary district will be dissolved and all the assets and liabilities will be assumed by the Town.

---

<sup>15</sup> Exhibit 2 (PDI Report), p. 31

<sup>16</sup> Conversation with Alvin Atkinson, President, Sanitary District #4. May 28, 1999

Most of the Town of Brookfield is located in the Brookfield West Sanitary Sewer Service Area, identified in the SEWRPC Community Assistance Planning Report Number 109. This area is proposed by SEWRPC to be served by the Fox River Water Pollution Control Center, located in the west-central portion of the City of Brookfield.<sup>17</sup> The Brookfield treatment plant is intended to serve the City and Town of Brookfield, the Village of Pewaukee, the Pewaukee Lake Sanitary District, the City of Pewaukee, a portion of the City of New Berlin, a portion of the Village of Menomonee Falls, the Villages of Sussex and Lannon, and a portion of the Town of Lisbon.

Public water supply is currently not available to Holly Crest and Gaywood Estates subdivisions along Springdale Road. This area could be served by bringing water from Pewaukee or by contracting with the City of Brookfield. There is no public water supply available to the northern section of the Town. Service to this portion of the Town would likely require contracting with the Village of Menomonee Falls. The cost to drill utilities under Capital drive is estimated at approximately \$700,000, according to testimony of Don Otto, consulting engineer for the Town of Brookfield. Plans have been developed to serve the Ravenswood area, in the Town core area, in 1999.

#### Shopping and Social Customs

There are approximately 6,243 residents who currently reside within the Town of Brookfield. The population is anticipated to grow to 6,350 by the year 2000. The Town has a growing commercial and retail base which serves its residents and surrounding communities. According to the Town's incorporation study, the daytime population of people who work, shop or pass through the Town on a daily basis swells to 250,000.<sup>18</sup>

A review of the list of businesses located in the Town, submitted by the petitioners (Exhibit 23) shows a mix of retail, services, manufacturing and professional practices. A full range of services are available in the Town to meet the needs of its residents, including: financial institutions, entertainment, childcare, automotive services, restaurants, professional and general services. In the *Weston* determination, the Department noted the importance of this mix of services, "Much more than just convenience retail establishments are present in Weston, a characterization important for contributing to a separate identity for a community within a metropolitan area (*Allouez*, 1985) (*Weston*, 1995).

A demographic study of the Town, based on 1990 U.S. Census data, shows that the age structure of the Town of Brookfield is similar to those for Waukesha County as a whole. Between 1980 and 1990, the Town and Waukesha County experienced a decline in the rate of growth for persons age 10 to 19 years old, and an increase in the age cohorts for those five and under, as well as those over the age of 55. Based on 1990 census data, the age groups with the largest populations by cohort were the 35-44 and the 45-54 year old cohorts, followed by the 10-19 year old cohort. This carries implications for the types of public and private services that Town residents will need in the future. Data on the median household income for town residents between 1979 and 1989 shows that the median income for town residents rose from \$31,075 in 1979 to \$52,189 in 1989. This compares to a median household income in Waukesha County of \$25,914 in 1979 and \$44,850 in 1989. The data indicates that the median household income for

---

<sup>17</sup> Sanitary Sewer Service Area For the City and Town of Brookfield and the Village of Elm Grove, Community Assistance Planning Report No. 109, Southeastern Regional Planning Commission (1995).

<sup>18</sup> IBID, Pg 3

the county is rising faster than the median income growth for the Town. This could also have planning implications for the Town and should be examined in further detail.<sup>19</sup>

The Town supports a Parks and Recreation Department that sponsors activities and maintains park facilities for the residents. The Town has prepared a Bikeway Master Plan, and is in the process of adopting a Comprehensive Outdoor Recreation Plan, both of which express the intent to consider the recreational, social and transportation needs of Town residents. The park and recreation facilities located in the Town consist of three Town parks (Marx Park, Wray Park, and Brooks Park) and one Waukesha County Park (Ebel Park). Further details regarding these facilities are provided in Section 2(b) "Level of Services". However, all of these facilities are located in the southern portion of the Town and are not readily accessible by residents who live in the northern portion of the Town. The Town's Draft Comprehensive Outdoor Recreation Plan concluded that, "the Town's residents are well served by their park system and adjacent parks in the City of Brookfield." Since residents in the residential areas east of Brookfield Road, and areas east of Springdale Road and north of North Avenue were served by nearby City of Brookfield parks, additional facilities were not recommended by the report to meet the needs of the resident population (Draft Comprehensive Outdoor Plan, pg. 30).

According to Bill Kolstad, Director of the City of Brookfield's recreation program, the City's parks and recreation programs use the Elmbrook School District facilities to run programs at no charge during non-school hours, with the exception of rental fees to use the school pool facilities and for weekend rentals. The youth recreation programs run by the City parks and recreation department are open to students in the Elmbrook School District who live outside the City (including Town of Brookfield residents) for an additional 1 ½ times the fee charged to City residents. Town residents may participate in all adult programs and senior center programs run by the City for an additional fee that varies by program. Town residents can also use park facilities and the public pool run by the City. There is a daily admission fee for the City pool and City residents pay a discounted fee for use of this facility. Kolstad indicated that, based on participation in registered programs, 5% or less of the participants in City parks and recreation programs were from the Town of Brookfield. Kolstad stated that, although he did not have data on this, use of the City parks and public pool by Town residents was probably higher.

The principal of Pleasant Hill School, Joy Smojer, stated that the community makes extensive use of the schools, gym, cafeteria, athletic fields and other resources. The Town of Brookfield parks and recreation department runs a summer art program at the school, as well as soccer and baseball leagues. Private athletic leagues and clubs also conduct activities at the school (the YMCA runs a basketball league at the school). She also stated that the gym and athletic facilities are used almost every night of the year. In addition, the school is also used by a number of other community groups. A church group holds regular meetings at the school on Sundays. A private organization will be running a summer day camp program at the school. The Town also uses the school as a voting/polling location.<sup>20</sup>

The petitioners have argued that the Town has a strong self-identity as a community. Petitioners point to a wide variety of community activities that its residents participate in and enjoy. They list a number of special or annual Town events, such as winter holiday festivities, a haunted Halloween trail, campfire story evenings, an annual Easter Egg hunt, a fishing contest and a

---

<sup>19</sup> Data from the Draft Comprehensive Outdoor Recreation Plan for the Town of Brookfield, Ruekert and Mielke, Inc. (1998).

<sup>20</sup> Conversation with Joy Smojer, Principal of Pleasant Hill School, School District of Waukesha, May 19, 1999



Fourth of July Parade. Petitioners also note the existence of such regular community activities as Boy & Girl Scout troops and two Cub Scout packs; as well as numerous athletic, civic, and religious organizations.

The Town's Draft Comprehensive Outdoor Recreation Plan for the Town of Brookfield (July, 1998) lists Pleasant Hill School's 9 acre facility as a neighborhood park, due to its proximity to developed subdivisions and the assumption that the recreation facilities are utilized by neighborhood residents during non-school hours. As discussed above, the school facilities do serve as a focus for many community activities in the Town of Brookfield.

### *Churches*

There are two churches with permanent facilities located in the Town of Brookfield. St. John's Evangelical Lutheran Church is a year-round church which sponsors bible groups, youth classes, and a choir. The building also hosts meetings of Boy Scouts, the Alliance for the Mentally Ill, two Alcoholics Anonymous groups, local concerts and an annual play and holiday fair.

The Elmbrook Church is an interdenominational church with approximately 3,500 members, the largest congregation in the southeast part of the state. Fred Snyder, the facilities administrator stated that, based on a 1994 mailing survey, approximately 50-60 families who were members of the church were residents of the Town of Brookfield. The church hosts many community activities, including Milwaukee Orchestra Symphony and Milwaukee Youth Symphony concerts, Elmbrook School District graduation ceremonies and recitals. It runs a licensed nursery and kindergarten and provides meeting space for several other organizations (food pantry, children's groups, a quilting group, and a weight loss group). The church sponsors the annual 4<sup>th</sup> of July parade and also runs a bookstore and library for use by the church and the surrounding community. Seniors ministry has monthly meetings and weekly topical classes. Attracts participants from all over the southeastern portion of the state.

Senior services available in the Town include two senior apartment complexes and two Community Based Residential Facilities (CBRF's) located in the Town that provide such services as housing, community activities, continuing healthcare and transportation assistance. The Town's Park and Recreation Department runs recreational programs geared towards seniors, and which are advertised in the Town Tidings newsletter and in schedules and other publications prepared by the Park and Recreation Department. A private non-profit senior taxi service serves the Town, as well as the City of Brookfield and the Villages of Butler and Elm Grove. This service is partially funded through a Community Block Grant. Funds for this program come from each of the above municipalities, except for Elm Grove.

The southern portion of the Town, along I-94 and Blue Mounds road has experienced a rapid growth in business, commercial and industrial development since the 1970's, resulting in a rapid increase in the number of employment opportunities generated in the Town. According to A Development Plan for Waukesha County Wisconsin (SEWRPC, Community Assistance Planning Report No. 209, August, 1996), in 1990 there were approximately 9,000 jobs located in the southern portion of the Town. Approximately 1,000 jobs were generated in the northern portion of the Town. (A Development Plan..., p 33, comment added – this number may be excessive and it is unclear within which jurisdiction the jobs reside.)

### *Summary of Current Land Uses*

The land use patterns within the Town can generally be described as a mixture of single family residential with lots sizes ranging from 1/3 acres to multi-acre estates. Commercial areas are located in three distinct areas; the Bluemound Rd commercial corridor within the Town; the

Moreland Road Commercial corridor within the City of Waukesha (in this vicinity, the south side of Moreland Road, with the exception of Russ Darrow and Steinhafels, lies in the Town of Brookfield); and a commercial corridor along Capitol Drive west of Barker Road. Lands along Deer Creek, Poplar Creek and the main stem of the Fox River are largely undeveloped and exist as wide wetland floodplains protected as environmental corridors (Exhibit 1, Stormwater Management Plan for the Town of Brookfield, 1-3).

The existing zoning districts in the Town can be generally described as follow. The northern portion of the Town is predominantly wetlands and a conservation district surrounding the Capitol Airport. There are some single-family-zoned areas abutting Weyer Rd. and along Capital Drive, on the southeastern border of this area of the Town. There is also a limited general business district zoned along the western part of Capital Drive opposite the Gateway Commercial Center in the City of Brookfield. The central (Springdale/Holly Crest - Gaywood Estates) area of the Town contain single-family zoned residential subdivisions, and one isolated 1.8-acre parcel. The southern portions of the Town also include significant conservancy areas along Deer Creek and Poplar Creek. Business, office, commercial and industrial development are concentrated in this portion of the Town, along Moreland, Bluemound, Barker, and Springdale Roads. Single-family and multi-family residential land uses extend east of Brookfield road, into PLS Section 28, and south along Barker and Brookfield Roads. The Town's limited general business district zoning also extends along Bluemound Road in the S½ of PLS Section 28. A conservancy district lies within the Town in the NW¼ of Section 28. A neighborhood business district lies along Greenfield Avenue in the SW¼ of Section 32. Further east along Greenfield Avenue lie two small isolated residential pockets that remain attached to the Town.

There are two roads that connect the two large parts of the Town (Hearing Testimony of Neil O'Riley, V.P. of Hey and Assoc.). Springdale and Barker Roads are county trunk highways (CTH) JJ and Y within the Town, and are the jurisdiction and maintenance responsibility of the City of Brookfield once they leave the Town boundary. Springdale and Barker Roads run directly north-south, and dead-end at Capitol Drive at their northerly extension, because of the wetlands existing in the northern portion of the Town. Further discussion of the system of local roadways occurs in the transportation section. Plans to extend Barker Road past Capitol Drive have been proposed but currently, travel between developments in the northwestern portion of the Town and the southern portion of the Town can be accomplished only by indirect routes (See the earlier transportation section).

The Town has no adopted local land use plan. (A Development Plan for Waukesha County Wisconsin (SEWRPC, 1996, p. 344); Ohm, "Inventory of Land Use Plans in Wisconsin," (UW-Madison, 1999)) The Town is in the process of reviewing a Draft Comprehensive Outdoor Recreation Plan for the Town of Brookfield (July, 1998). This document updates a 1989 Comprehensive Outdoor Recreation Plan. The draft document states that past planning reports related to the Town of Brookfield were utilized to insure that the updated plan is integrated with adjacent community, and with county and state recreational needs and to compliment the park and open-space planning of adjacent communities and Waukesha County.<sup>21</sup> This plan compliments and draws on the existing Town of Brookfield Bikeway Master Plan (1997).

<sup>21</sup> The Draft Outdoor Recreation Plan (Exhibit 27) cites the following planning reports related to the town of Brookfield that were utilized in preparing the updated plan:

- An Outdoor Recreation Plan for the Town of Brookfield, Ruekert & Mielke, Inc., 1989
- Wisconsin Statewide Comprehensive Outdoor Recreation Plan 1991-1996, WDNR, 1991
- A Park and Open Space Plan for the City of Brookfield, SEWRPC, 1991
- A Park and Open Space Plan for the Town and Village of Pewaukee, SEWRPC, 1980

Town ordinances rezoning property must be approved by the Waukesha County Board and signed by the County Executive. Dick Mace, Waukesha County Parks and Planning, stated that there is no formal procedure for the City of Brookfield to comment on these petitions, except through the mandatory public hearing process. Chapter 17 of the Town's ordinance code lays out their zoning ordinances.<sup>22</sup> Town ordinance 17.13 requires that notice of any public hearings required to be held under the terms of the zoning code shall be sent to the clerk of any municipality whose boundaries are within 1,000' of any lands included in the petition. The section states that failure to provide the required notice will not invalidate any actions taken. Mace stated that the City has provided comments to the county on only a few of the rezoning petitions by the Town. He said that, while these comments are only advisory, that they are referenced in the staff recommendations and may be included as a basis for suggested revisions to a rezoning ordinance. An adopted Town ordinance and attached documentation are first reviewed by the Parks and Planning Commission and a recommendation is sent to the standing Land Use Parks and Environment Committee of the County Board. The full County board must then approve the petition.

During the Department's hearing, a series of letters from the City of Brookfield to the Waukesha County Park and Planning Commission regarding planned development or rezoning along Blue Mounds Road, Greenfield Avenue and Capitol Drive, reflecting inconsistent zoning and development standards, were presented as exhibits. Conflicts have apparently occurred between the City and the Town regarding a number of zoning and building standards issues (such as location of driveways, setbacks, aesthetic and construction standards, etc.) In the case of a proposed K-Mart development on Bluemound Road, the City expressed concern, not only regarding a number of site development plan issues, but also with the impact of commercial development on surrounding residentially zoned properties located in the City.<sup>23</sup> Similar concerns were expressed regarding the proposed rezoning of several parcels of land along Greenfield Avenue from single-family residential to commercial uses.<sup>24</sup> While data submitted by the petitioners show that rezoning requests in the past five years have been relatively rare, these conflicts are likely to increase and to complicate relationships between the City and the Town of Brookfield as structures along these major corridors age and as redevelopment pressures increase.<sup>25</sup>

According to Todd Weik (Ruekert & Mielke), engineering consultant to the Town, the Town has instituted a six-month moratorium on Capitol Drive corridor developments while it engages in planning studies for this corridor. According to Mr. Weik, the Town has been working independently on its' own "visioning" process for this corridor and anticipates that the results of this study will be completed in approximately five months.<sup>26</sup>

- 
- A Park and Open Space Plan for the City of New Berlin, SEWRPC, 1981
  - A Park and Open Space Plan for Waukesha County, SEWRPC, 1989
  - Town of Brookfield Bikeway Master Plan, Landscape Architects, Inc., 1997

<sup>22</sup> Exhibit 29, the Code of Ordinances for the Town of Brookfield, contains the town's zoning code.

<sup>23</sup> See Exhibit 31

<sup>24</sup> See Exhibit 33.

<sup>25</sup> See Exhibit 24. In the last five years, only 16 rezoning requests have been filed. 9 of these rezoning requests were granted and 7 were denied. According to conversation with Dick Mace, Waukesha Co. Parks and Planning, on May 26, 1999, as well as hearing testimony by Gary Lake, town of Brookfield Building and zoning administrator, there are not currently significant rezoning issues.

<sup>26</sup> According to Mr Weik, the town chairman has attended meetings with the City of Brookfield's planning department to share information regarding the town's study but city participation in this process has been

The Town has adopted a code of 19 ordinances, including a subdivision control ordinance. However, floodland zoning and shoreland/wetland zoning are governed by the Waukesha County ordinance. (A Development Plan for Waukesha County Wisconsin, pp. 191-193). Mr. Mace stated that, if a new development proposal is in compliance with the Town's zoning ordinances and is not within an area designated as a shoreland/wetland area by the county, the county does not play a formal role in these local decisions. Mr. Mace stated that the County Parks and Land Use Department provided technical assistance and advice to the Town when requested in the past.

The Town engineering consultants have prepared a Stormwater Management Plan for the Town. However, 7.6 square miles of the Cities of Brookfield and New Berlin drain through the Town of Brookfield via Deer Creek, thus requiring the cooperation of these communities in order to implement aspects of the plan (Stormwater Management Plan, p. 3-3).

The Town of Brookfield has been mostly developed. According to the incorporation study done for the petitioners, 111 acres of undeveloped land remain in the Town.<sup>27</sup> According to the Stormwater Management Plan for the Town of Brookfield (p. 3-1), there were only 45-50 acres of land remaining that were available for development. This report was also prepared in part by Hey and Associates, the consultants who prepared the 1996 incorporation study. A summary of comparative land uses for Waukesha County municipalities is attached as Table 4, p. 35.

---

limited. Dan Ertl, Director of Planning for the city of Brookfield, stated that members of the task force which prepared the city's Capitol Drive Corridor Plan have been invited by the town to attend meetings of the task force preparing the town's Capitol Drive Corridor Plan. The city has refrained from exercising extraterritorial zoning authority in the town of Brookfield. (Conversations with Todd Weik, May 13, 1999 and Dan Ertl, May 27, 1999).

<sup>27</sup> ) Out of the 111 developable acres, 3.06 acres are zoned for neighborhood business, 34.19 acres are zoned for limited general business, 15.79 acres are zoned for office and professional business, 8.13 acres are zoned for limited manufacturing and 1.97 acres are zoned for general manufacturing. 1.8 acres of the remaining land is zoned for institutional use and .6 acres are zoned for park district. 45.75 acres are zoned for residential purposes. (Incorporation Study, 1998. Pg 22

# Land Use in Waukesha Co. By Civil Division (1990):

URBAN:	Transportation, Communication and Utilities										Government and Institutional			Recreational			Subtotal		
	Residential	Commercial	Industrial	Percent of Total	Acres	Percent of Total	Acres	Percent of Total	Acres	Percent of Total	Acres	Percent of Total	Acres	Percent of Total	Acres	Percent of Total	Acres	Percent of Total	Acres
Cities:	Acres	Percent of Total	Acres	Percent of Total	Acres	Percent of Total	Acres	Percent of Total	Acres	Percent of Total	Acres	Percent of Total	Acres	Percent of Total	Acres	Percent of Total	Acres	Percent of Total	Acres
	23,186	27.2	2,163	2.5	1,739	2	7,955	9.3	2,087	2.4	39,208	45.9	2,078	2.4	39,208	45.9	2,078	2.4	39,208
C. of Brookfield:	7,533	44.5	894	5.3	230	1.4	2,144	12.6	646	2.3	11,845	69.9	398	2.3	11,845	69.9	398	2.3	11,845
Towns:	26,794	11.2	804	0.3	732	0.3	10,831	4.5	963	1.3	43,133	18	3,009	1.3	43,133	18	3,009	1.3	43,133
	932	23.3	221	5.5	94	2.4	444	11.1	56	0.8	1,777	44.5	30	0.8	1,777	44.5	30	0.8	1,777
	1,944	14	15	0.1	4	0	661	4.8	100	2.4	3,059	22.1	335	2.4	3,059	22.1	335	2.4	3,059
	2,919	14.1	38	0.2	51	0.2	780	3.8	50	0.8	3,995	19.3	157	0.8	3,995	19.3	157	0.8	3,995
	2,526	15.5	215	1.3	378	2.3	1,810	11.1	126	1.6	5,316	32.6	261	1.6	5,316	32.6	261	1.6	5,316
Waukesha	2,864	17.4	51	0.3	33	0.2	780	4.8	57	1.6	4,055	24.7	270	1.6	4,055	24.7	270	1.6	4,055
NON URBAN:																			
Cities:	Agricultural	Wetlands	Woodlands	Percent of Total	Acres	Percent of Total	Acres	Percent of Total	Acres	Percent of Total	Acres	Percent of Total	Acres	Percent of Total	Acres	Percent of Total	Acres	Percent of Total	Acres
	20,516	8,434	3,942	4.6	3,942	4.6	4,523	5.3	8,760	10.3	46,175	54.1	85,383	100	85,383	100	46,175	54.1	85,383
C. of Brookfield:	852	1,976	416	2.4	416	2.4	129	0.8	1,722	10.2	5,095	30.1	16,940	100	16,940	100	5,095	30.1	16,940
Towns:	109,096	39,066	23,132	9.7	23,132	9.7	10,310	4.3	14,884	6.2	196,488	82	239,648	100	239,648	100	196,488	82	239,648
	322	1,206	56	1.4	56	1.4	60	1.5	576	14.4	2,220	55.5	3,997	100	3,997	100	2,220	55.5	3,997
	5,235	1,023	1,982	14.3	1,982	14.3	1,378	10	1,165	8.4	10,783	77.9	13,842	100	13,842	100	10,783	77.9	13,842
	9,065	3,272	1,832	8.8	1,832	8.8	106	0.5	2,499	12	16,774	80.7	20,769	100	20,769	100	16,774	80.7	20,769
	5,501	1,990	687	4.2	687	4.2	1,040	6.4	1,768	10.9	10,986	67.4	16,302	100	16,302	100	10,986	67.4	16,302
Waukesha	6,589	3,263	1,173	7.1	1,173	7.1	116	0.7	1,227	7.5	12,368	75.3	16,423	100	16,423	100	12,368	75.3	16,423

Notes: Data for urban land uses includes related off-street parking areas of more than 10 spaces.

(a.) Includes extractive, landfill, and unused lands

Source: SEWRPC

Table 4

### *Urban land uses*

44.5% of total land use is urban in character (the average for towns in Waukesha Co. was 18%). A Development Plan for Waukesha County Wisconsin, pp. 101-102). Between 1980 and 1992, according to A Development Plan for Waukesha County Wisconsin, the Town of Brookfield had one of the largest increases of any Waukesha County civil division in the proportion of commercial property value to equalized property value( p. 44). According to 1990 data from the SEWRPC, commercial uses make up about 5.5% of the Town's land uses while industrial uses make p about 2.4%. Residential land use is about 23% of the total land use in the Town. This is significantly greater than the average for Waukesha Co. towns of about 11%.<sup>28</sup>

While the of Brookfield is primarily a single-family home community, the need to provide alternatives to single family housing was reflected in the number of permits issued for multi-family and two-family structures in the Town in the period between 1990 and 1997.

### **Town of Brookfield Residential Permit Summary:**

Totals	1990	1991	1992	1993	1994	1995	1996	1997
Single Family	41	27	54	34	26	8	13	9
Duplex	6	18	8	14	2	2	3	0
Multi-Family	2	5	9	10	12	8	10	4

Source: Town of Brookfield Building Inspector report (October, 1998)

Data collected by SEWRPC between 1990-1995 shows a proportion of multi-family and two-family housing permits, relative to the total authorized building permits, of approximately 75%. This compares to an average of approximately 25% in other Waukesha Co. towns. Nine out of the thirteen towns in Waukesha County issued no permits for multi- or two-family structures during this time period(A Development Plan for Waukesha County Wisconsin, p. 228). The pattern of multi-family and two-family housing is an asset to the Town in that it provides a diversity of housing opportunities, which both supports the commercial growth in the Town and allows employees to reside near employment opportunities.

### *Non-Urban Uses*

Agricultural use is approximately 15% of non-urban land use (significantly less than other Waukesha County towns). Of the non-urban amount, wetlands comprise about 52-53% (mostly in the northern part of the Town). Woodlands and surface water appear to make up about 5-6% of the Town's non-urban land uses. Other uses (including extractive landfill and unused land) are approximately 26-27% (A Development Plan for Waukesha County Wisconsin, p. 106)

## **DETERMINATION**

This petition consists of seven separate parts of the remnant Town of Brookfield. The very existence, character, and separation of these remnant areas create unusual service and land use regulation issues for the Town, as well as presenting governance and intergovernmental issues for the neighboring municipalities, principally the City of Brookfield. If only the Goerkes Corners area were present, without the easterly extension of the Town into the core of Section 28 north of Bluemound Road, or the remnant Town parcels lying along Greenfield Road, or the Wal-

<sup>28</sup> A Development Plan for Waukesha County Wisconsin..., pg 105

Mart/Beatrice Cheese parcels south of I-94, **and** if the minimum square mile requirement of an isolated or metropolitan city or village obtained (see s. 66.015 (1-4), Wis. Stats.), then it would be possible to make a finding that this section is met based on the preceding discussion which primarily relates to Town activities and accomplishments within this core area. However, this is a "metropolitan" incorporation petition subject to the explicit requirements of s. 66.015 (5), Wis. Stats., and because the remnant Town areas are needed in order to achieve the minimum size required for filing an incorporation petition with the circuit court, they too are subject to the standards to be considered by the Department that are found in s. 66.016, Wis. Stats. Recall that the beginning of this section briefly recounted that the legislative and case law history requires that the Department find that **all** enumerated (1) (a) criteria are met in order for it to approve an incorporation petition for referendum.

Because of the existence of the aforementioned seven areas, described in some detail in the preceding commentary on soils, previous political boundaries, transportation, and shopping and social customs, the Department finds that the fundamental requirement of s. 66.016 (1) (a), Wis. Stats., is not met. In brief, the Holly Crest and Gaywood subdivisions are homogenous to the City of Brookfield, as they are nearly indistinguishable in physiography and neighborhood character from the adjoining residential enclaves in the City of Brookfield. Retaining this area within the Town also creates jurisdictional issues involving Springdale Road. The Capitol Drive area is virtually the gateway to the City of Brookfield, and would greatly benefit from uniform professional-level planning and design standards, as well as a uniformity of public works and public protection services. The small residential enclaves north of the Capitol Airport and associated wetlands relate more to the Village of Menomonee Falls, than to any other jurisdiction. In order to reach these far-reaching areas, it is necessary to traverse City of Brookfield streets and County Trunk Highways, which creates service, investment, planning and regulation, and other inequities for the citizens of neighboring communities. This is why the Wisconsin Legislature adopted the criteria in (1)(a) that mandates that "The entire territory of the proposed city or village **shall** be reasonably homogenous and compact...(emphasis added)."



## SECTION 1(b), "TERRITORY BEYOND THE CORE"

### ***STANDARD TO BE APPLIED***

"The territory beyond the most densely populated one-half square mile specified in s. 66.015 (1) or the most densely populated square mile specified in s. 66.015 (2) shall have an average of more than 30 housing units per quarter section or an assessed value, as defined in s. 66.021 (1) (a) for real estate tax purposes, more than 25% of which is attributable to existing or potential mercantile, manufacturing or public utility uses. The territory beyond the most densely populated square mile as specified in s. 66.015 (3) or (4) shall have the potential for residential or other land use development on a substantial scale within the next three years. The department may waive these requirements to the extent that water, terrain or geography prevents such development." (Wis. Stats. sec. 66.016(1)(b))

### ***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, and applies to this incorporation. The second part of section (1)(b) asks that the territory petitioned for incorporation 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."

In this situation, as in the Allouez Determination (Wisconsin Department of Development, August, 1985), few remaining parcels remain available for development after excluding the lands contained in the primary and secondary environmental corridors as described in the preceding Section (1)(a) – which the Department is entitled to waive (certain of these areas –such as the territory surrounding the Capitol Drive Airport - have already been discussed in Section (1)(a), and are undevelopable regardless of whose jurisdiction they may ultimately be assigned). Petitioners' Exhibit 2 (PDI Report, page 22), illustrating developable parcels, shows remaining scattered parcels predominately concentrated around Capitol Drive immediately south of the Capitol Drive Airport, and immediately north of I-94 and Blue Mound Road, east and west of Barker Road. In addition, there may be the potential for redevelopment of existing developed sites along Blue Mound Road as warranted by fully-depreciated structures combined with real estate market conditions, and the need for frontage road improvements, and pedestrian and bicycle access as the Town of Brookfield portion of the Blue Mound Road corridor matures. Escalating land values justify teardowns, and depending upon the sensitivity of the town zoning ordinance and required floor-area ratios, landowners and developers may sense opportunities not presently understood by the town.

Petitioner's Exhibit 22, "Building Permit Summary, 1990-1998 (October, 1998), provides detailed information suggesting that for the decade of the 1990's single-family residential construction peaked in 1992, duplex construction peaked in 1991, multi-family construction peaked in 1994, and commercial construction peaked in 1990, with a smaller upswing from 1994-1997. However, the trend in additions and alterations to single-family, duplex, and commercial structures appears to only decline slightly (65 permits – 1998, 68 permits – 1997, 90 permits-1996, 88 permits-1997, etc.). This trend is not inconsistent with the scarcity of developable sites (111 acres remaining – Exhibit 2 (PDI Report), page 21).

### ***DETERMINATION***

The Department finds that substantial urban development has already occurred in the core -- Goerkes Corners area - and will likely to occur on many of the acres remaining to be developed. The extensive existing development and varied land uses in the core of the town surrounding Goerkes Corners outweighs the question of whether or not the remaining developable lands, exclusive of wetlands and other undevelopable lands permitted to be excluded by the Department should be developed by the Town of Brookfield, or by the City of Brookfield (territory lying in the Capitol Drive corridor, along Greenfield Road, and south of Weyer Road). The town can, if it chooses, actually develop most of these areas to some appropriate urban densities with public sewer and water based on the exhibits provided and documents collected by the Department. This contrasts with the Department's 1991 Pewaukee Determination wherein we found that certain developable PLS sections could only be developed and legally served by the City of Waukesha (Pewaukee, pp.20-21) Therefore the Department determines that this standard has been met.

## SECTION 2 (a) "TAX REVENUE"

### **STANDARD TO BE APPLIED**

"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**

#### **Budget and Tax Comparisons**

In this section, because of the filing of the intervening City of Brookfield's resolution with the circuit court "...indicating a willingness to annex the territory described in the incorporation petition..." (pursuant to s. 66.014 (6), Wis. Stats.), a brief overview of city and the town will be presented in tandem. Table 5 on page 41 shows the 1997 budgets of the Town and City of Brookfield.<sup>29</sup> The budgets are a useful test of the Town of Brookfield's contention that the town's people do not want to become part of the City of Brookfield because they seek a different set of services.<sup>30</sup> Yet, the spending priorities of the Town and City of Brookfield are similar for the major categories (see Table 5 on page 41 & Table 6 on page 42). The percent of the total operational and capital expenditures used for the major spending categories: law enforcement, fire, highway maintenance, parks and recreation, and general government are similar for the Town and City. However, the per capita expenditures for all the major spending categories listed above are higher, in some cases up to 60% higher, for the City of Brookfield (see Table 5, page 41).

The City and Town of Brookfield similarly prioritize their spending in consistent ways (see Table 6, page 42), but the City spends more for almost every spending category and taxes its residents at a higher rate. Interestingly, both communities have a nearly identical per capita full-equalized value, which shows that the amount of tax base available to serve each citizen is almost the same. In 1997, both municipalities' per capita equalized values were just under \$100,000 per person, which is more than double the state average of \$47,570.<sup>31</sup>

In 1997, the total general obligation debt of the Town of Brookfield was \$7,620,000, which is 1.2% of its full-equalized value. For the same year the City of Brookfield's total general obligation debt was \$55,387,500 and 1.5% of its full-equalized value (see Table 5, page 41). Both municipalities are well under the mandated debt cap of 5% of full-equalized value.

#### **Equalized Value of Town Parts**

In 1998, the Town of Brookfield's total assessed value was \$612,205,000. The largest contiguous area of the Town had an assessed value of \$577,477,200 in 1998. The northern portion of the town that includes Capitol Drive had an assessed value of \$16,463,700, and the area with the Holly Crest/Gaywood subdivisions had an assessed value of \$18,264,100. The 1998 assessed

<sup>29</sup> County and Municipal Revenues and Expenditures 1997. Wisconsin Department of Revenue, Division of State and Local Finance. Bulletin No. 97, February 1997.

<sup>30</sup> Public Hearing Testimony

<sup>31</sup> Calculated by MBR with information from the Department of Revenue and Department of Administration. State's total equalized value of \$248,994,915,200 divided by the state's 1998 population estimate of 5,234,350.

**TABLE 5**  
**Expenditures and Revenues**

Revenues--Governmental Fund	TOWN OF BROOKFIELD '97			CITY OF BROOKFIELD '97		
	DOLLARS	PERCENT	\$/CAPITA	DOLLARS	PERCENT	\$/CAPITA
<b>Taxes</b>						
General Property Taxes	1,925,000	38.4%	310.4	18,104,900	45.4%	489.7
Tax Increments	-	0.0%	-	-	0.0%	-
In Lieu of Taxes	-	0.0%	-	670,300	1.7%	18.1
Other Taxes	427,900	8.1%	69.0	1,694,000	4.2%	45.8
Total Taxes	2,352,900	44.5%	379.4	20,469,300	51.3%	553.6
Special Assessments	323,400	6.1%	52.2	85,800	0.2%	2.3
<b>Intergovernmental Revenues</b>						
Federal Aids	-	-	-	47,500	0.1%	1.3
State Shared Revenues	157,600	3.0%	25.4	1,127,600	2.8%	30.5
State Highway Aids	172,900	3.3%	27.9	1,245,700	3.1%	33.7
All Other State Aids	28,200	0.5%	4.5	363,400	0.9%	9.8
Other Local Government Aids	-	0.0%	-	236,000	0.6%	6.4
Total Intergovernmental Rev.	358,700	6.8%	57.8	3,020,300	7.6%	81.7
Licenses & Permits	160,100	3.0%	25.8	907,400	2.3%	24.5
Fines, Forfeits & Penalties	138,800	2.6%	22.4	413,400	1.0%	11.2
Public Chg. For Services	160,700	3.0%	25.9	1,657,700	4.2%	44.8
Interg. Chg. For Services	1,432,600	27.1%	231.0	-	0.0%	-
<b>Miscellaneous Revenues</b>						
Interest Income	310,300	5.9%	50.0	1,321,100	3.3%	35.7
Other Revenues	23,400	0.4%	3.8	633,400	1.6%	17.1
Total Miscellaneous	333,800	6.3%	53.8	1,954,500	4.9%	52.9
Subtotal--General Revenues	5,261,400	99.4%	848.5	28,508,700	71.4%	771.1
Other Financing Sources	29,400	0.6%	4.7	11,404,500	28.6%	308.5
Total Revenue & Other Financing Sources	5,290,800	100.0%	853.2	39,913,200	100.0%	1,079.6
<b>Expenditures--Governmental Fund</b>						
<b>General Operations &amp; Capital</b>						
General Government	395,600	13.2%	63.8	3,214,300	12.4%	86.9
Law Enforcement	758,600	25.2%	122.0	5,663,500	21.8%	153.2
Fire	527,500	17.5%	85.1	4,389,900	16.9%	118.7
Ambulance	127,200	4.2%	20.5	636,400	2.4%	17.2
Other Public Safety	96,000	3.2%	15.5	592,000	2.3%	16.0
Highway Maintenance & Adm.	455,100	15.1%	73.4	4,503,800	17.3%	121.8
Highway Construction	187,200	6.2%	30.2	1,130,100	4.3%	30.6
Road-Related Facilities	87,700	2.9%	14.1	295,300	1.1%	8.0
Other Transportation	2,200	0.1%	0.4	-	0.0%	-
Solid Waste Coll. & Disposal	41,100	1.4%	6.6	1,675,700	6.4%	45.3
Other Sanitation	100	0.0%	0.0	17,300	0.1%	0.5
Health & Human Services	500	0.0%	0.1	64,000	0.2%	1.7
Culture & Education	-	0.0%	-	1,512,400	5.8%	40.9
Parks & Recreation	267,600	8.9%	43.2	1,870,300	7.2%	50.6
Conservation & Development	62,900	2.1%	10.1	432,900	1.7%	11.7
All Other Expenditures	-	0.0%	-	-	0.0%	-
Subtotal--Oper. & Cap. Expend.	3,008,000	100.0%	485.1	25,998,400	100.0%	703.2
<b>Debt Service</b>						
Principal	1,322,700	-	213.3	1,745,000	-	47.2
Interest & Fiscal Chg.	425,200	-	68.6	1,426,400	-	38.6
Total Debt Service	1,748,000	-	281.9	3,171,500	-	85.8
Other Financing Uses	-	-	-	8,775,300	-	237.4
Total Expenditures & Other Financing Uses	4,756,100	-	767.0	37,945,900	-	1,028.3
Total General Obligation Debt	7,620,000	1.2%	1,228.8	55,387,500	1.5%	1,498.1
Full Equalized Value	611,880,900	-	98,674.6	3,612,363,500	-	97,705.4

TABLE 6

## Budgets: General Categories

Town of Brookfield Revenues and Expenditures 1997				City of Brookfield Revenues and Expenditures 1997			
Revenues		1997	% of Total	Revenues		1997	% of Total
Property Taxes		1,925,000	36%	Property Taxes		18,104,900	45%
Other Taxes		427,893	8%	Other Taxes		2,445,509	6%
Intergovernmental Revenue		358,844	7%	Intergovernmental Revenue		3,020,300	8%
Licenses and Permits		160,000	3%	Licenses and Permits		907,466	2%
Fines and Forfeitures		138,857	3%	Fines and Forfeitures		413,400	1%
Public Charges for Service		160,700	3%	Public Charges for Service		1,657,700	4%
Commercial Revenues		333,800	6%	Commercial Revenues		1,954,500	5%
Other*		1,785,400	34%	Other		11,404,500	29%
Total		5,290,494	100%	Total		39,908,275	100%
Expenditures				Expenditures			
General government		400,000	13%	General government		3,268,805	13%
Protection of persons and property		1,507,300	50%	Protection of persons and property		11,281,800	43%
Highway and Trans.		730,000	24%	Highway and Trans.		5,929,200	23%
Park and Recreation		267,600	9%	Park and Recreation		1,870,300	7%
Planning and Economic Develop.		-	0%	Planning and Economic Develop.		276,952	1%
Convention/Visitor Bureau		62,790	2%	Convention/Visitor Bureau		161,666	1%
Health and Sanitation**		41,200	1%	Health and Sanitation		1,692,700	7%
Library***		-	0%	Library		1,501,818	6%
Other		-	0%	Other		-	0%
Total		3,008,890	100%	Total		25,983,241	100%

\* \$1.4 million of this line is from a one-time payment from the city of New Berlin

\*\* The town of Brookfield contracts out solid waste disposal and the cost is billed as at direct charge to customers

\*\*\*The town of Brookfield pays a county levy for library services, although this mill rate is less than the city's (see text for discussion)

Sources: Wisconsin Department of Revenue County and Municipal Expenditures 1997;

Town of Brookfield Financial Statements and Independent Auditor's Report, Year Ended Dec. 31, 1997;

City of Brookfield 1997 Comprehensive Annual Financial Report, Year Ended Dec. 31, 1997

value for all that part of the town east of Brookfield Road is \$42,553,070. Therefore, subtracting the area east of Brookfield Road and the two largest pieces of the town, the Capitol Drive area and Holly Crest/Gaywood subdivisions, leaves an assessed value of about \$530,000,000 for the contiguous area of the town west of Brookfield Road.<sup>32</sup>

#### Areas Where Budgets Differ

The percentage of the total respective budgets spent on solid waste collection, and culture and education are significantly different. Solid waste collection in the Town of Brookfield is contracted out and is billed as a direct charge to residents.<sup>33</sup> The solid waste bill is attached to the quarterly water and sewer bills of each household; therefore, the Town collects and spends no money for the standard weekly solid waste collection. The City of Brookfield collects its own solid waste and therefore spends a larger percent of its total budget on solid waste collection.

The Town expends dollars on culture and education activities, whereas 5.8 percent of the City's expenditures are devoted to the category (see Table 5, page 41). The Wisconsin Department of Revenue defines the culture and education category as; operating expenditures and capital outlays for libraries, museums, theatre and other cultural activities, and handicapped schools operated by counties. Most of the City's culture and education spending is for the Brookfield Public Library. The City of Brookfield contributed \$1.2 million to the operation of the public library in 1997.<sup>34</sup> The city's library payments are raised through the local property tax levy. The Department calculates that city residents paid 0.416 per \$1000 to support library services. The Town of Brookfield's budget shows no expenditure on libraries because the town pays for its library service through the county property tax levy, which contributes to the Waukesha County Federated Library System. The county levy for libraries was 0.265 in 1998.<sup>35</sup> Town of Brookfield residents contributed approximately \$160,000 to the county Federated Library System, which distributes money to 17 public libraries, including the Brookfield Public Library, throughout Waukesha County. Although town residents have the same access to the Brookfield Public Library and all other libraries in the Waukesha County Federated Library System, they pay less than City of Brookfield homeowners. A City of Brookfield homeowner with a property assessed at \$200,000 would pay \$83 per year to support the public library, whereas, a Town of Brookfield homeowner with a home of the same assessed value would pay \$53 per year. This accounts for only 63% of what City residents pay for the same library service. See the level of services section 2(b), for additional information about library services.

Other budget lines that differ significantly between the City and Town are financing sources and uses. These items appear in the city's budget, but not within the Town's budget because cities have more financing options than towns. In their 1997 budget, the Town of Brookfield obtained a one-time payment from the City of New Berlin for New Berlin's share of the sewer interceptor installed under highway I94. This \$1.4 million payment is categorized under intergovernmental charge for service. The sewer work was financed in the 1980's, and the City of New Berlin decided to pay the remaining balance in 1997.

#### Trends in Local Property Tax Rates

Local property tax rates for the seventeen Waukesha County municipalities examined in this analysis show no consistent trend from 1995 through 1997. Eight of the municipalities have a mill rate increase each year from 1995 through 1997. The Cities of Brookfield, New Berlin,

<sup>32</sup> Barbara Hartung, Town of Brookfield Clerk, correspondence dated, May 26, 1999.

<sup>33</sup> Barbara Hartung, Town of Brookfield Clerk, per comm, April 29, 1999.

<sup>34</sup> Brookfield Public Library Annual Report 1997. City of Brookfield.

<sup>35</sup> Thomas Hennen, Jr., Director, Waukesha County Federated Library System, per comm., May 25, 1999.

Waukesha, Muskego; Villages of Elm Grove and Sussex; and Towns of Brookfield and Lisbon all have steady but small increases during the years examined. The City of Delafield saw mill rate decreases each year, and the remaining eight municipalities' mill rates demonstrate no pattern (see Table 7, page 46 and Figure 1, page 47).

The Town of Brookfield's local property tax rate in 1997 of \$3.71 was higher than all nearby towns. Yet by contrast, rates in all the nearby cities and villages were higher than all adjacent town rates. Local property tax rates of the incorporated cities and villages ranged from a high of \$9.29 in the City of Waukesha, to a lower mark of \$2.49 for the City of Delafield (see Table 7, page 46).

Table 8 on page 46 and Figure 2 (page 48), Figure 3 (page 49), and Figure 4 (page 50) have selected towns and villages statewide that have population sizes near that of the Town of Brookfield's, which was estimated to be 6,201 persons in 1997. The table and graphs show that, with the exception of the Town of Madison, the towns have lower local mill rates than the villages. The average tax rate for the selected towns is \$3.89, whereas the average for the selected villages is \$7.26.

The Town of Brookfield's local property tax rate was highest among Waukesha County towns; however, it is near the average for similarly situated towns statewide and is below the average of all cities and villages examined.

#### Village Budget and Government Tasks Performed by the Town

The petitioners did not submit a proposed village budget to the department; but, instead provided the current and many previous Town of Brookfield budget reports. This suggests the petitioners intend to provide the same number and level of services. This is similarly supported by petitioner's Exhibit 2, p. 31. The Town of Brookfield provides the following services: police, fire, ambulance, street maintenance, and general governmental services including zoning, assessment, building inspection, and recreation.

If the Town of Brookfield were to incorporate, the area would lose the services of the Waukesha County Park and Planning Department. The Town does not have its own planning staff. The loss of this County service would greatly reduce the amount of planning services available to the town; services for which there is a demonstrable need. Table 6 shows that the Town of Brookfield spent no funds for planning in 1997, and a check of town budgets of three random years back to 1990 turned up no planning expenditures. If the Town incorporated, a village planner or private planning consultant would be needed to fill the void left by the loss of Waukesha County Park and Planning Department. The planner could offer the new village a service delivered by most incorporated municipalities, and a planning professional could assist the new village (the Town) to make land use decisions with an understanding of how those choices impact the greater Milwaukee Metropolitan region.

Currently, many Town of Brookfield services are offered at basic levels. Fire service, land use planning, and zoning services are offered at very basic levels, especially given the existing amount of urbanization and tax base within the Town. Given current land use related problems in the Town, such as traffic congestion, and the redundancy of fire departments for both the town and city, the Town should enhance or restructure these two services regardless of incorporation. In fact, consolidation of services with the City of Brookfield, or perhaps another adjoining community, might improve services.



The Town of Brookfield would be able to find the tax base to support added services appropriate to an incorporated community in the metropolitan area. We would expect tax rates to increase with incorporation as the town provides services for which it currently relies on others. However, the citizens in the Town of Brookfield should be able to bear tax increases.

TABLE 7  
COMPARATIVE LOCAL PROPERTY TAX RATES:  
SELECTED WAUKESHA COUNTY MUNICIPALITIES

Municipality	Year 1995	1996	1997
Brookfield (C)	5.23	5.17	5.79
Delafield (C)	4.28	4.01	2.49
New Berlin (C)	4.94	5.09	5.58
Waukesha (C)	8.72	9.05	9.29
Muskego (C)	3.77	3.83	4.50
Oconomowoc (C)	5.26	5.26	5.19
Elm Grove (V)	5.34	5.39	8.24
Hartland (V)	4.00	3.76	4.00
Menomonee Falls (V)	6.58	6.61	6.56
Pewaukee (V)	6.86	6.82	6.95
Sussex (V)	3.37	3.68	3.88
<b>Brookfield (T)</b>	<b>3.51</b>	<b>3.26</b>	<b>3.71</b>
Genesee (T)	1.20	1.30	1.31
Lisbon (T)	2.11	2.42	2.72
Merton (T)	1.75	1.70	1.64
Pewaukee (T), (C)	2.58	2.85	2.74
Waukesha (T)	1.42	1.42	1.47

TABLE 8  
COMPARATIVE 1997 LOCAL PROPERTY TAX RATES: TOWN OF BROOKFIELD  
AND OTHER WISCONSIN MUNICIPALITIES OF SIMILAR POPULATION

Municipality	1997 Population	1997 Tax Rate	County
<b>Brookfield (T)</b>	<b>6201</b>	<b>3.71</b>	<b>Waukesha</b>
Oconomowoc (T)	7740	2.40	Waukesha
Delafield (T)	7047	1.54	Waukesha
Suamico (T)	7094	4.26	Brown
Madison (T)	6604	8.63	Dane
Burlington (T)	6081	2.76	Racine
Town Ave.		3.89	
Elm Grove (V)	6229	8.24	Waukesha
De Forest (V)	6182	8.30	Dane
McFarland (V)	5988	6.54	Dane
Kimberly (V)	5768	6.36	Outagamie
Mukwonago (V)	5575	6.84	Waukesha
Village Ave		7.26	

FIGURE 1

# TAX RATES FOR SELECTED WAUKESHA COUNTY MUNICIPALITIES

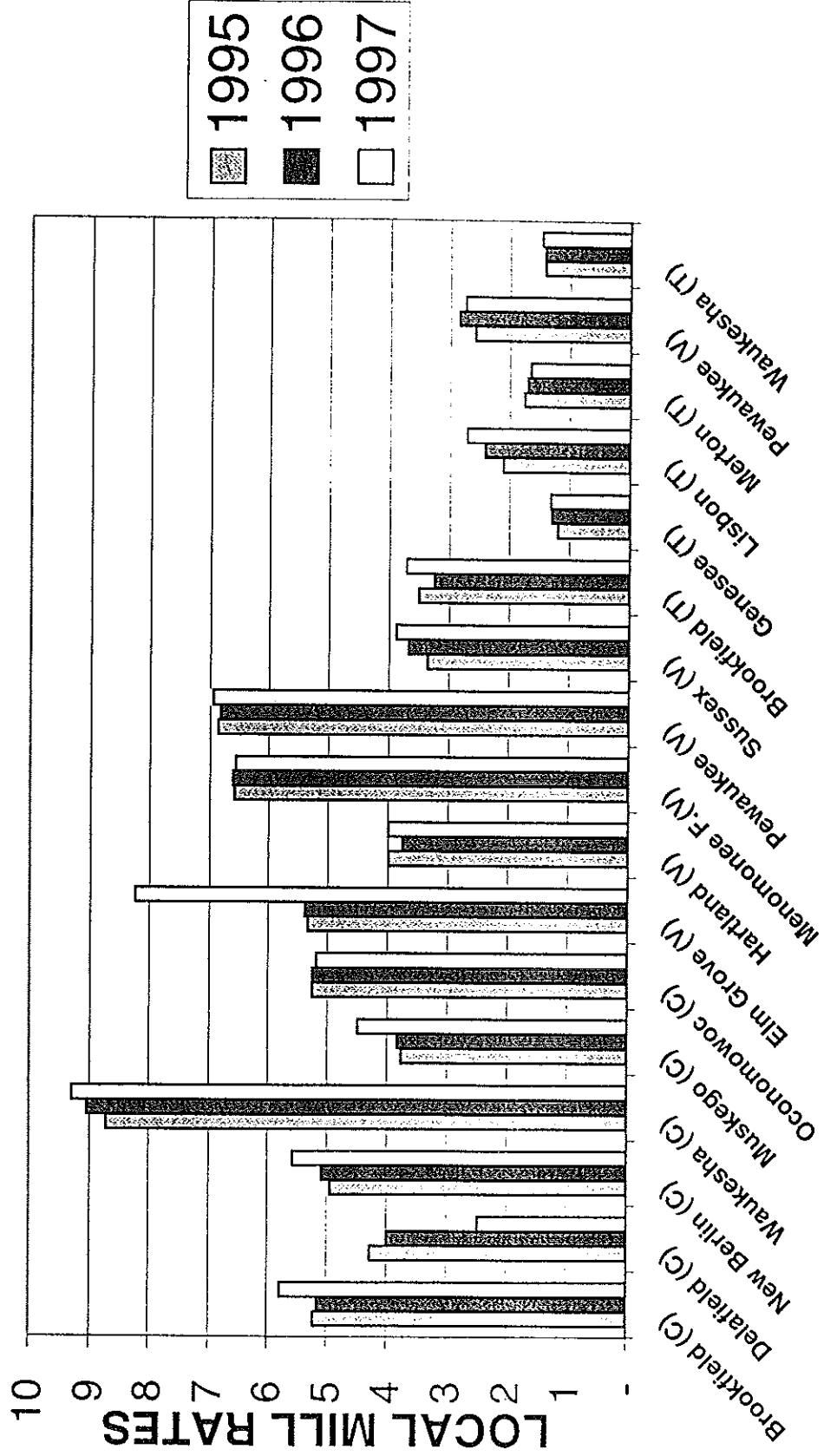


FIGURE 2

# SELECTED WIS. MUNICIPALITIES WITH SIMILAR POPULATION AS THE TOWN OF BROOKFIELD

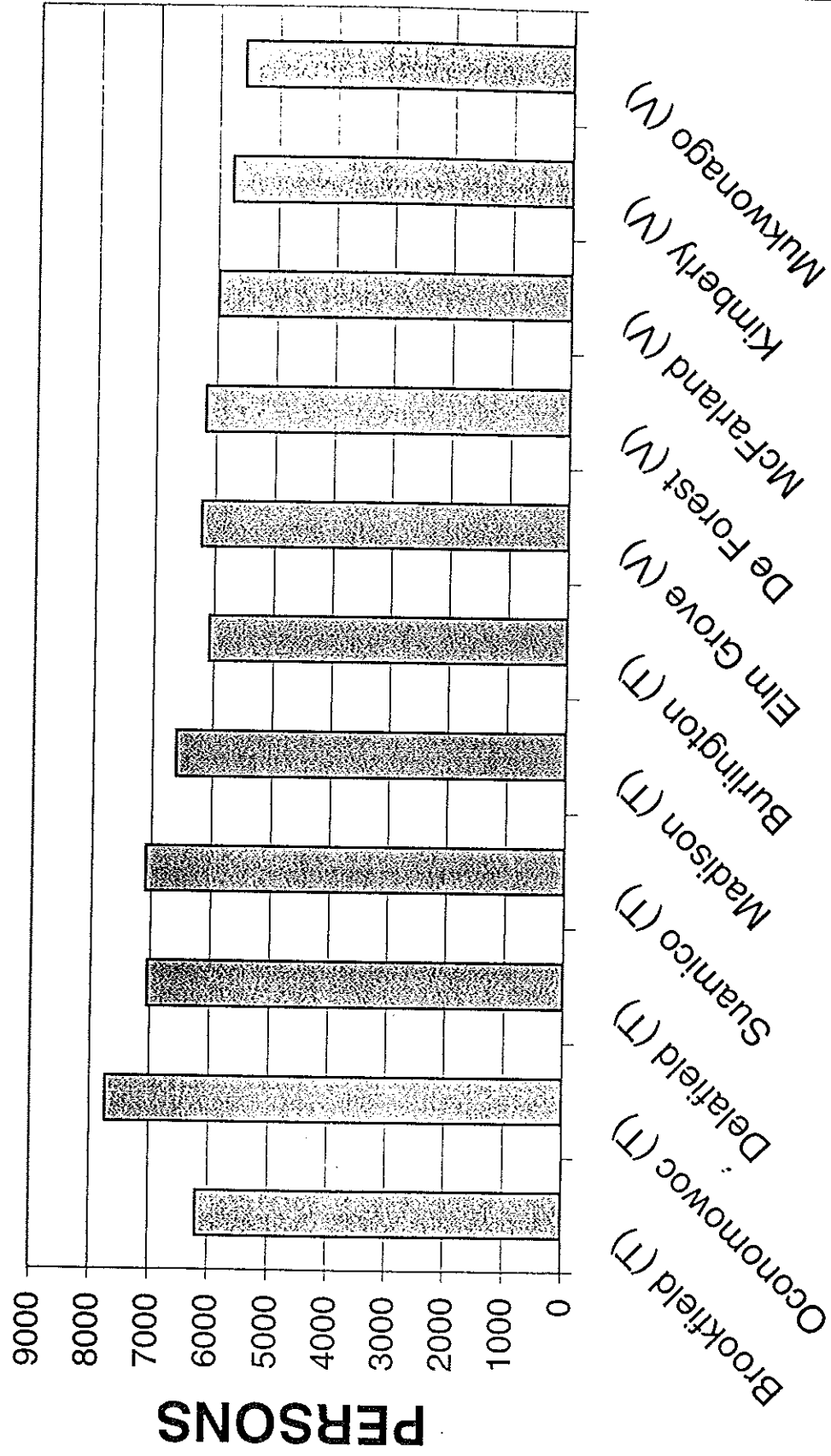


FIGURE 3

# 1997 LOCAL PROPERTY TAX RATES OF TOWNS WITH SIMILAR POPULATIONS

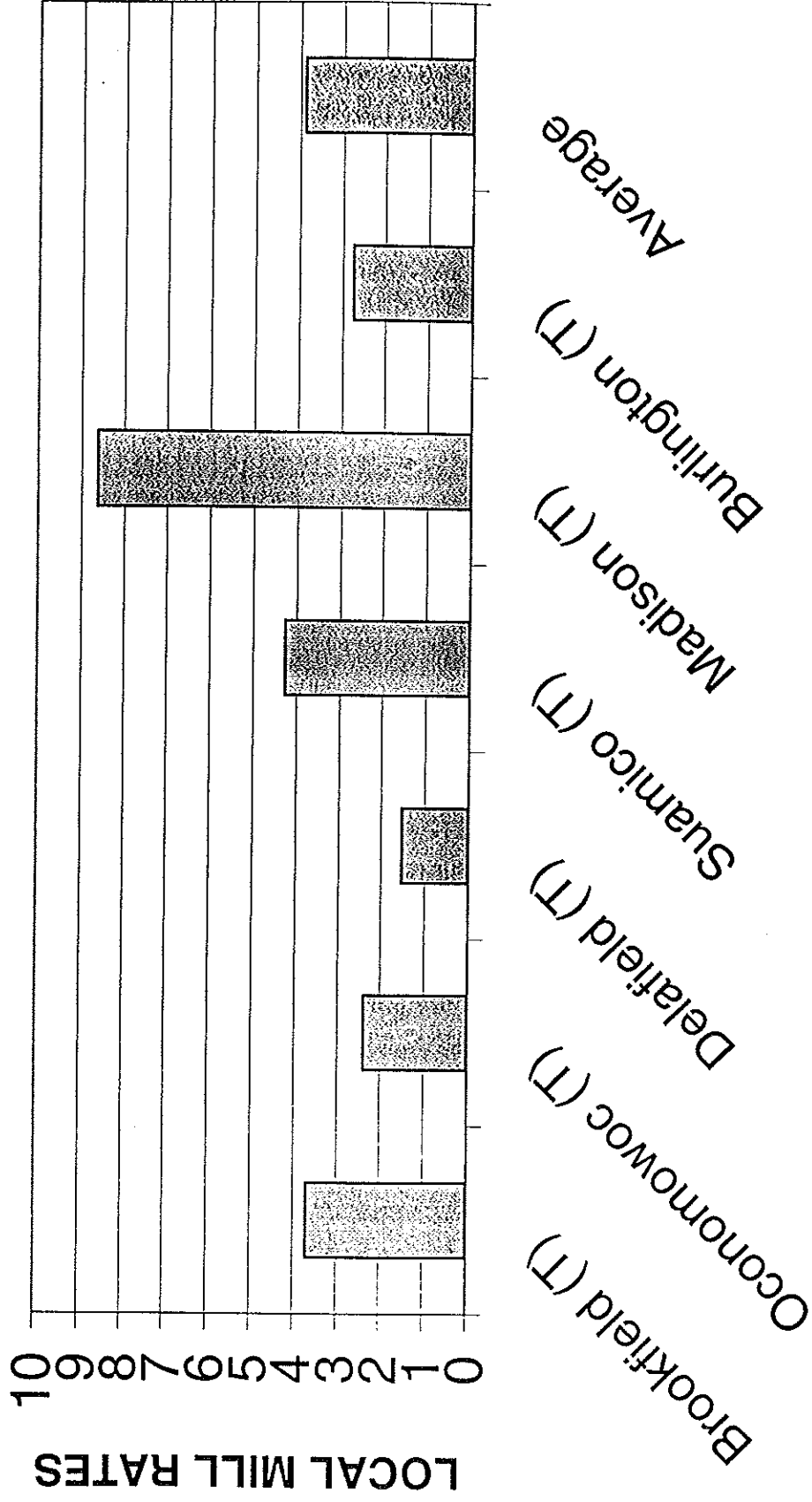
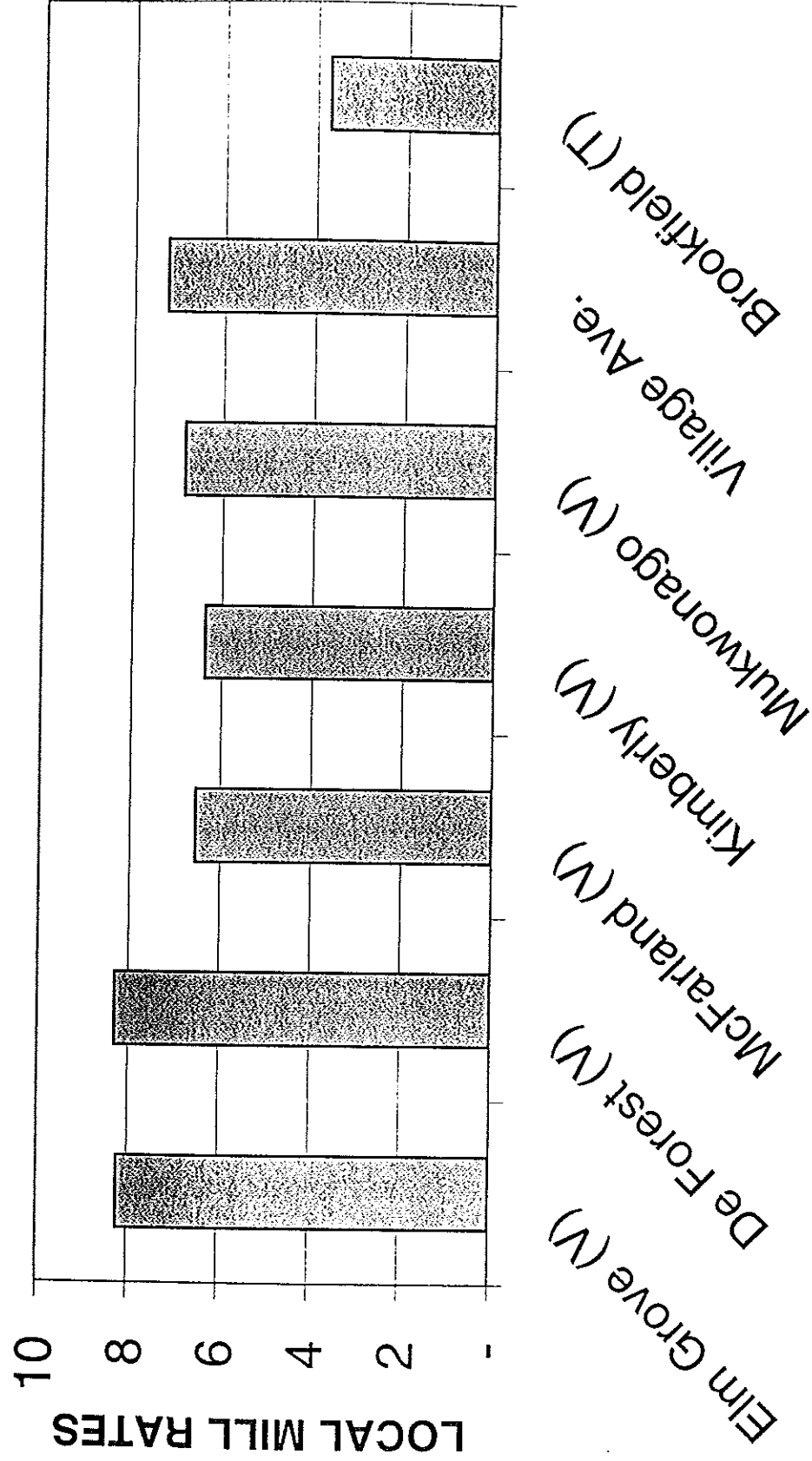


FIGURE 4

# 1997 LOCAL PROPERTY TAX RATES OF VILLAGES WITH SIMILAR POPULATIONS



***DETERMINATION***

It is the department's finding that should incorporation occur, the high value property tax base in the petitioned territory would allow the area to have tax rates that compare favorably with those of similarly situated local governments. Therefore, the department finds that this standard is met.



## SECTION 2 (b) LEVEL OF SERVICES

### *STANDARD TO BE APPLIED BY THE DEPARTMENT*

"The level of governmental services desired or needed by the residents of the territory compared to the level of services offered by the proposed city and the level available from a contiguous municipality which files a certified copy of a resolution as provided in s. 66.014 (b)."

### **ANALYSIS**

#### Fire service

The Town of Brookfield Fire Chief is Career personnel, all others are paid on call. The Town's fire department includes a target number of 45 part-time employees. There are 41 Emergency Medical Technicians (EMT), five of which are EMT intermediate, two are paramedics, and one is a physician (Petitioner's Exhibit 2, p. 27)<sup>36</sup>. The fire department is currently seeking to hire an Assistant Fire Chief to supplement the force. There is one fire station located in the southern part of the Town at 645 North Janacek Road. It is staffed by up to six personnel from 8:00 a.m. until 6:00 p.m., from Monday through Thursday. It is staffed by up to six personnel 24 hours a day on Friday, Saturday and Sunday. This staffing includes one company officer, one heavy equipment operator (HEO) and four firefighter/Emergency Medical Technicians. The Town is presently negotiating a contract with the paid on call staff and when this is concluded, it is expected that there will be staffing on a 24 hour a day, 365 days a year basis<sup>37</sup>.

The Town recently installed a strobe system on traffic lights to clear a path for emergency vehicles and an Emergency Outdoor Warning System. The dispatch service for police and fire is contracted through the Waukesha County Sheriff's department. In 1998, the Town Fire Department budgeted \$11,300 for the Waukesha County dispatch service and it spent \$8,639.39 (Petitioner's Exhibit 21).<sup>38</sup>

In 1993, the ISO Commercial Risk Services, Inc. did a survey of the town's fire insurance classification and changed the Town's protection class from Class 7 to Class 4. This change did not decrease insurance rates for residential properties. However, the property insurance premium calculations for sprinklered properties decreased by about 10%. The change also affected typical mercantile properties about -11% for wood frame buildings, -16% for masonry buildings and -6% for fire-resistive buildings. Variations in construction, occupancy and private protection can result in increases or decreases from this average (Exhibit 21).<sup>39</sup>

The Fire Department developed a Mutual Aid Response Alarm Box System to provide the most efficient and effective service possible to all parts of the Town (Exhibit 21).<sup>40</sup> The system includes box areas that have been determined by geographical location and the type of hazard within the area. When the dispatch agency receives a request for emergency services, the dispatchers use box area maps and box cards to determine what type of assets need to be sent to

<sup>36</sup> Petitioner's Exhibit 2, Planning and Design Institute, Inc., Town of Brookfield Incorporation Study, October 1998, p. 27.

<sup>37</sup> Letter from Town of Brookfield Fire Chief Skip Sharpe, May 14, 1999.

<sup>38</sup> Petitioner's Exhibit 21, Town of Brookfield Fire Department's Budget Status 1998.

<sup>39</sup> Petitioner's Exhibit 21, ISO Commercial Risk Services, Inc. Letter.

<sup>40</sup> Petitioner's Exhibit 21, Mutual Aid Alarm Box System.

what area. The Town fire department is also supported through a county-wide Mutual Aid agreement for fire service and an Automatic Aid agreement with the City of Brookfield.

Automatic Aid is a process of sharing resources with another community immediately and automatically. Automatic Aid can be used to provide "closest unit" responses to incidents along with resources such as a ladder truck or water tanker. This agreement was initiated in June of 1998 and it will remain in effect until June of 1999 when the City of Brookfield Fire Department should have its new ladder truck in service.

Mutual Aid is a process of sharing resources that may be required at a large or specific incident that is beyond local resource capability. There is a Mutual Aid agreement among communities throughout Waukesha County. One of the benefits of Mutual Aid is that it can help communities serve areas that are located more than 5 minutes, or approximately 1.5 miles from their own fire stations (see Map 12, page 54). The northern portion of the Town and the middle portion along Springdale Road are somewhat removed from the Town of Brookfield Fire Station. In fact, this middle portion of the Town is closer to the City of Pewaukee Fire Station #3.

Of the 355 residents (6% of the total population) who responded to the, "Town Service Survey," 68% consider public services (fire/police) to be the most important issue for the town. The next most important issue is water, sewer and other utilities (51%) (Petitioner's Exhibit 2, Appendix).<sup>41</sup> The majority of the respondents were either "very satisfied" or "satisfied" with garbage collection, street maintenance, park maintenance, fire protection and police protection.<sup>42</sup>

Despite this relatively positive assessment from residents, the Town of Brookfield Fire Department received some negative comments about its service capability from the City of Waukesha. In a memoranda submitted as an exhibit to the incorporation hearing held in October 1998, the City of Waukesha Plan Commission stated that "the fragmented and discontinuous areas of the town delays the efficient deployment of services." (City of Waukesha Exhibit 102).

In Exhibit 104, the City of Waukesha Fire Chief Robert Stedman asserts, "I can't state that the incorporation of the Town into a village would change any level of services that are provided or solve any problems as mentioned above with the uneven borders." (City of Waukesha Exhibit 104).

#### *Consolidation and Resources Needed to Serve Town at City Service Levels*

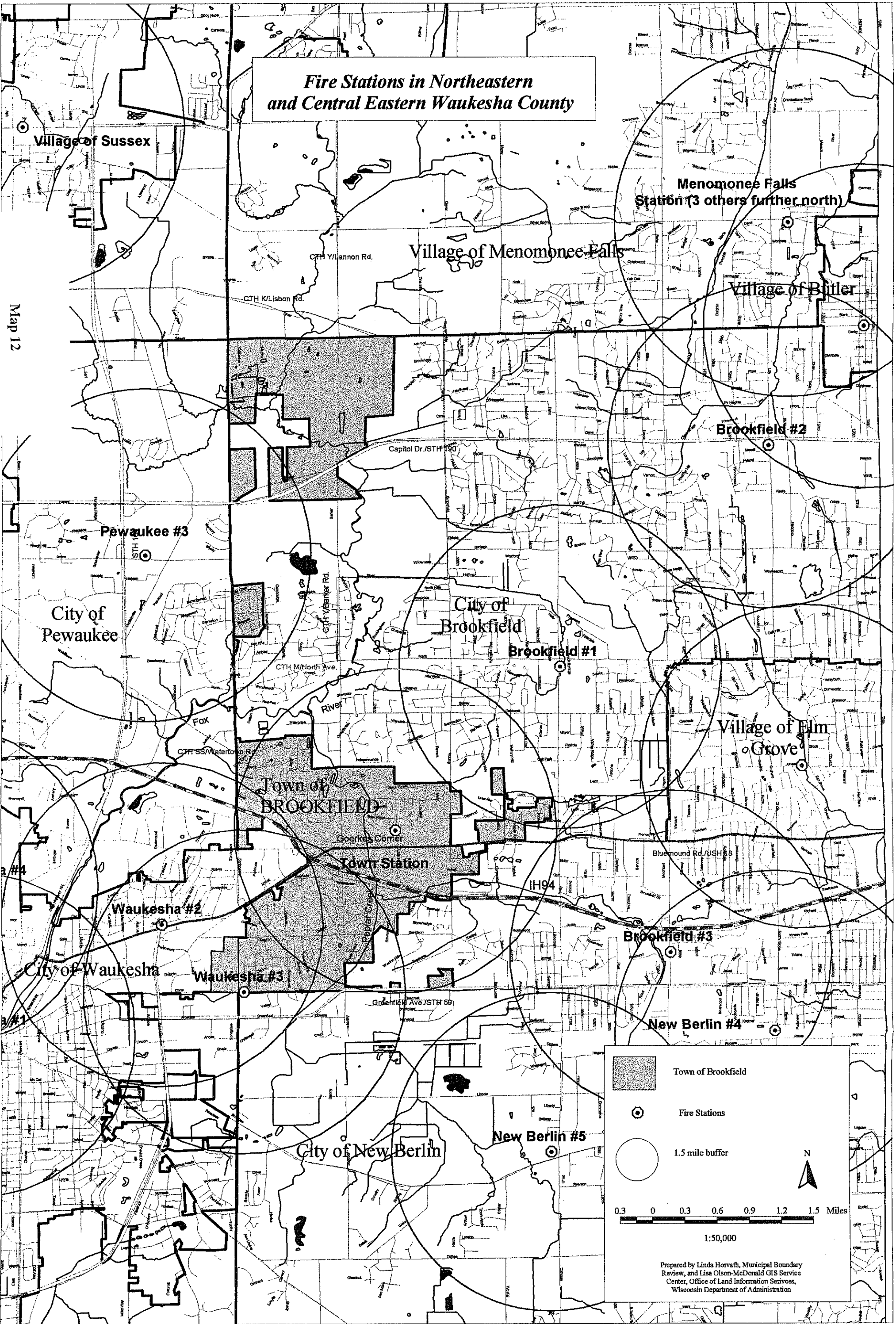
The City of Brookfield Fire Department has suggested that it consolidate with the Town of Brookfield Fire Department and the City of Waukesha Fire Department. The City of Brookfield Fire Department conducted an analysis of how it could serve the town. Table 9 on pages 55 and 56 and the following discussion reflects the results of this analysis.

---

<sup>41</sup> Petitioner's Exhibit 2, Planning and Design Institute, Town of Brookfield Incorporation Study, October 1998, Appendix.

<sup>42</sup> Ibid.

*Fire Stations in Northeastern  
and Central Eastern Waukesha County*



**TABLE 9**  
**Comparison, fire service provided by City of Brookfield and Town of Brookfield**  
*Sources: City of Brookfield Fire Department Report, Town of Brookfield Budget, Letter from Town Fire Chief, City of Brookfield Budget*

Service	Town of Brookfield	City of Brookfield
Staffing	1 career personnel (Chief), 45 part-time employees paid on call, one fire station staffed by up to 6 personnel until 6:00 p.m. Monday through Thursday, and up to 6 personnel Friday through Sunday, 24 hours a day.	58 career personnel, 3 fire stations staffed with 5 personnel 24 hours a day, 365 days per year.
Staff and fire station per capita:	Approx. 7 staff per capita and .00016 stations per capita.	Approx. 2 staff per capita and .00008 fire stations per capita.
Equipment	1 tanker, 3 rescue-pumpers, 1 ladder truck, 1 brush truck, 2 ambulances, 1 staff vehicle.	1 ladder truck including 2 reserve engines, 2 basic life support ambulances w/1 reserve ambulance, 1 advanced life support paramedic unit, a grass fire rig, a command vehicle, a hazardous materials vehicle, 4 staff vehicles.
Annual average response time	Based on a sample of 247 of the 940 calls the town responded to in 1998, the average annual response time was 3 minutes 20 seconds (elapsed time between the first unit leaving the fire station and arriving on the scene).	Based on data collected from 1992-1997, the average annual response time ranged from 3 minutes 15 seconds to 4 minutes.
Emergency medical service	Yes (41 Emergency Medical Technicians with 37 at Basic level, 5 at Intermediate level, 2 paramedics and one doctor).	Yes (includes 9 paramedics).
Public Fire Education	Yes	Yes
Fire suppression	Yes	Yes
Fire prevention inspection/training	Yes	Yes
Hazardous Materials, level B response	Yes, through a yearly contract with the Brookfield/Butler Hazardous Materials Team, level A hazmat response is offered through the regional hazardous materials team in Milwaukee.	Yes
Disaster Management/1 <sup>st</sup> responder.	Yes, the town has an Emergency Government Director and in cooperation with this office, the Fire Department provides response in the town and to other communities on a mutual aid basis.	Yes

Fire Expenditures, 1997	\$527,500; \$84 per capita	\$4,389,900; \$118 per capita
Estimated fire expenditures, 1999	\$741,102; \$119 per capita	\$4,506,247; \$122 per capita
Local mill rate, 1997	3.7 per \$1,000 property value; owner of property assessed at \$100,000 would pay \$370 in local taxes for the year	5.8 per \$1,000 property value; owner of property assessed at \$100,000 would pay \$580 in local taxes for the year
Estimated full-equalized value, 1999	\$690,563,891 (estimated full equalized value for 1999)	\$3,939,012,132 (estimated full equalized value for 1999)
Estimated local mill rates, 1999	<u>4.0 per \$1,000 property value; owner of property assessed at \$100,000 would pay \$400 in local taxes</u>	<u>6.6 per \$1,000 property value; owner of property assessed at \$100,000 would pay \$660 in local taxes</u>

\*Over the past 5 years, the full equalized value for the Town has increased by an average of 5.75% and the City full equalized value has increased by an average of 4.5%; these averages were used to calculate the estimated '99 local mill rate

If the City of Brookfield were to add the town to its service area, the City Fire Department determined that it would need to add 16 personnel to include three lieutenants, three equipment operators, nine firefighters and one administrative secretary.<sup>43</sup> According to the City, the Town could enjoy increased fire service and pay relatively less for this service since the costs associated with providing human and physical resources on a smaller scale has a major adverse impact on taxpayers. This is due to such items as expensive facilities, equipment and personnel costs, and duplicate pieces of apparatus to serve the same basic area. The City of Brookfield has not yet completed analysis as to exactly how much town residents might pay in taxes if they were to be served either by the City of Brookfield Fire Department or through a consolidated fire department.

The City asserts that existing Town and City boundaries create response confusion that could be eliminated with consolidation. This is partly due to the fact that dispatching is provided by two separate agencies. According to the City of Brookfield Fire Department, City and Town units are often dispatched to the same call independently; units from each department must respond through areas of the other department to reach emergencies and serve their customers; cellular 911 calls can lead to improper responses; redundant responses can create confusion, congestion, and risks for citizens and responding personnel.

According to Town Fire Chief Skip Sharpe, while he has not conducted an exhaustive survey of the town's run reports, there were only a small number of calls that the City of Brookfield's Fire Department was dispatched to unnecessarily in 1998 (the town's jurisdiction). Chief Sharpe also asserts that the only such calls he knows of involved traffic accidents on the roadway where a cellular 911 call was routed to the wrong dispatch agency, also known as "public service answering point" or PSAP, or where the caller reported the accident at an incorrect address.

<sup>43</sup> Intervenor's Exhibit C-4, City of Brookfield Fire Department, Report on Service Levels, October 15, 1998, p. 4; Personal communication with City Fire Chief Tim McGrath, April 26, 1999.

Additionally, there were no calls dispatched to the town that were within the jurisdiction of the City of Brookfield's Fire Department.<sup>44</sup>

Town Fire Chief Skip Sharpe also asserts that the 911 system works quite well. However, confusion does sometimes arise when an accident occurs in a roadway within one community and is reported from a telephone across the street, in another community. Also unpredictable are 911 calls from cellular phones as the caller may say that he or she is in one community when they are actually in another community.<sup>45</sup>

Town Fire Chief Skip Sharpe also asserts that it is not often that the Town Fire Department must drive through the city to reach other parts of the town for service. In a sample of 247 of the 940 calls serviced in 1998, only 18 responses involved driving through parts of the City of Brookfield.<sup>46</sup>

The City of Brookfield Fire Department has stated that it needs to reduce response times to incidents in the southwest (including I-94) and northwest areas of the city. The city will eventually need to build additional stations in the southwest and northwest to better serve these areas of the city and the town. If consolidation does not occur, the town will have to pass new city fire stations to reach certain areas of its district. The city has stated that the best way to serve these areas is to pool resources and strategically locate these resources to benefit both communities.<sup>47</sup>

According to Town Fire Chief Skip Sharpe, there are very few incidents originating in the northern part of the Town, above the airport on Weyer Road, Catherine Court and Martha Lane. In the sample of 247 of the 940 calls serviced in 1998, only one call originated from that area. The call occurred at about 8:40 a.m. and the Town's response time was eight minutes.<sup>48</sup> There is an automatic mutual aid agreement between the Town of Brookfield and the Village of Sussex to provide response to this area. The Town's response route is east on Bluemound Road, north on Brookfield Road, west on Lisbon Road then south on Weyer Road. The route is seven miles long.<sup>49</sup>

#### *Consolidation benefit<sup>50</sup>*

- 24 hour/day staffing, 7 days per week.
- Paramedic service provided by a department that is applying to become a Paramedic Training Center and is increasing its number of Paramedic units.
- Integrated inspection services for building, fire, electrical, plumbing, zoning, plan review and Underground/Aboveground tank inspections.
- Training provided by a certified Training Officer and EMS Coordinator.
- Public education through Survive Alive and other year-round public education programs.
- A hazardous materials team for level B hazards (the Town currently is served by the city of Brookfield and Butler under an annual contract for this activity).

---

<sup>44</sup> Letter from Town of Brookfield Fire Chief, Skip Sharpe, May 14, 1999.

<sup>45</sup> Ibid.

<sup>46</sup> Ibid.

<sup>47</sup> Letter from City of Brookfield Fire Chief Tim McGrath, May 14, 1999.

<sup>48</sup> Letter from Town of Brookfield Fire Chief Skip Sharpe, May 14, 1999.

<sup>49</sup> Ibid.

<sup>50</sup> Letter from City of Brookfield Fire Chief Tim McGrath, May 14, 1999.

Reduced response times achieved through full-time staffing and closer proximity to the southwest portion of the city and town.

- Increased on-duty resources allows quicker responses and more resources for incidents.
- Special rescue for ice emergencies and also the City of Brookfield is initiating a Confined Space Rescue response system with the City of Waukesha.
- Supervision services by a Deputy Chief/Shift Commander 24/7.

#### Police service

The Town of Brookfield Police Department includes nine full-time sworn police officers (6 full-time sworn patrol officers plus Chief, Captain and Lieutenant) and five part-time sworn patrol officers. There is one full-time non-sworn clerk.<sup>51</sup> The Town's police station is located 645 North Janacek Road in the Town Hall. The Wisconsin State Patrol District #2 is located approximately one mile south of the Town's station also on STH "18".<sup>52</sup>

Traffic problems around Goerkes Corners go back to the 1950's when the two-lane Bluemound Road serviced all thru-traffic from Milwaukee to Waukesha and Madison. Interstate 94 had not yet been built and the increasing number of cars and trucks created a bottleneck at the Goerke's junction. Traffic continued to grow on Bluemound Road and in the early 1970's, the Town reported 20 or 30 accidents per year. In 1987 there 330 accidents recorded and in 1995, 560 accidents were recorded on Bluemound Road. Intensive development along the once narrow country road brought with it theft, burglary and shoplifting. By 1981, the Town had been reduced in size to about five square miles and the population was approximately 4,364. The Police Department was feeling pressure to safeguard Town businesses as the surrounding Cities of Waukesha and Brookfield were annexing Town land and bringing with them higher volumes of traffic and increased levels of crime. By 1990, it was necessary for the Town police department to increase its staff from two full-time officers to 5 full-time and 15 part-time officers.<sup>53</sup>

Police Chief Calvin Williams heads the department with support from a full-time clerk and a team of eight full-time sworn officers and five part-time sworn officers who are required to attend a police academy such as the one at the Milwaukee Area Technical College. Four hundred hours of study are required of the officers in addition to a minimum of two years of police science study, this study qualifies the officers for certification by the Training and Standards Bureau of the Wisconsin Department of Justice. The officers must also go through 24 hours each year of in-service training.<sup>54</sup>

The Town's Police Department has three fully-marked and two unmarked squad cars that are on duty 24 hours per day. The majority of the officers' time (80%) is spent policing the commercially saturated Bluemound Road. In 1995 there were 560 accidents and in 1996 the accident level dropped to 531. The Index Crimes Report for 1994-95 recorded a decrease in violent crime of 42.8% and an increase in theft for 1995 of 39.8% (the police department attributes this increase to increasing commercialism along Bluemound Road with motor vehicles comprising the largest category of stolen property).<sup>55</sup>

---

<sup>51</sup> Petitioner's Exhibit 2, Planning and Design Institute, Town of Brookfield Incorporation Study, October 1998, p. 9.

<sup>52</sup> SEWRPC, Waukesha County Development Plan, Map 44, "Police Stations in Waukesha County: 1993", p. 125.

<sup>53</sup> Petitioner's Exhibit, Dwyer, Eleanore, A History of the Town of Brookfield: 1839-1997, p. 23.

<sup>54</sup> Ibid, p. 25.

<sup>55</sup> Ibid.

The Town Police Department expects to spend approximately \$2,091,800 on capital purchases and improvements in 1999 (Petitioner's Exhibit 30).<sup>56</sup>

In 1998, the Town Police Department joined a program called Suburban Mutual Assistance Response Teams (S.M.A.R.T.). Agencies from both Milwaukee and Waukesha Counties are participating in the program. Which agencies respond and the number of officers dispatched depends upon the size and location of the incident.<sup>57</sup>

In addition to its regular services, the Town Police Department offers a "house check" service to monitor people's property while they are away on vacation. The Police Department also runs Project Kidcare, a program that it first introduced in 1996. The program provides parents of children who are lost or abducted with a free, instant photograph of their child along with vital statistics to aid in safe and prudent recovery. In 1997, the Police Department began holding an annual Bicycle Safety Day in May.<sup>58</sup>

In a memoranda to Waukesha City Attorney, Curt Meitz, (City of Waukesha Exhibit 103)<sup>59</sup> City of Waukesha Deputy Police Chief Wayne Dussault stated that, "In the area of general patrol operation, the fragmented structure of the existing Town does not lend itself to continuous and fluid patrol operations. Major highway obstacles hinder the adequate and timely response of emergency personnel to any type of priority response which in turn endangers the lives of the citizens being served." He also stated that the Town does not have the resources or the manpower to provide a full and complete range of law enforcement services and that they must rely on the Sheriff's Department of the larger surrounding agencies to provide necessary technical assistance. Dussault did state, however that "The Town of Brookfield Police Department functions adequately within their existing structure and within the resources made available to them."

Despite the City of Waukesha's somewhat negative view of the Town's police service, the Town of Brookfield's *Town Services Survey* taken as part the *Incorporation Study* shows that of 355 residents surveyed, 42% are "very satisfied" and 44% are "satisfied" with Town police protection service (Petitioner's Exhibit 2, Appendix).<sup>60</sup>

---

<sup>56</sup> Petitioner's Exhibit 30.

<sup>57</sup> Petitioner's Exhibit 25, Town of Brookfield Parks and Recreation Department, Town Tidings Newsletter, June 1998.

<sup>58</sup> Ibid.

<sup>59</sup> City of Waukesha Exhibit 102.

<sup>60</sup> Petitioner's Exhibit 2, Planning and Design Institute, Town of Brookfield Incorporation Study, October 1998, Appendix.



**TABLE 10**  
**Comparison of City and Town Police Departments**  
Sources: City of Brookfield Police Department Annual Report 1997, Town of Brookfield  
Incorporation Study 1998, History Report

Police Department	Town of Brookfield	City of Brookfield
Station (s)	One station housed in the old Town Hall building at 645 North Janacek Road.	One station housed in a public safety facility at 2100 North Calhoun Road.
Staffing	9 full-time sworn officers (6 full-time sworn officers and Chief, Captain and Lieutenant) and 5 part-time sworn officers. There is one full-time non-sworn clerk.	62 sworn officers and 28 civilian employees provide 24 hour a day service.
Equipment	3 fully marked and 2 unmarked squad cars on duty 24 hours per day.	27 vehicles
Annual operating budget, 1997	\$776,000	\$5.6 million
Spending per capita, 1997 (report by the Wisconsin Taxpayers Alliance shows that Wisconsin municipalities with populations between 30,000 and 150,000 residents spent between \$109 and \$235 per capita for police services in 1996)	\$122 per capita	\$145 per capita
Special services	House check to monitor residents' property while they are away; Project Kidcare for child abductions; annual Bicycle Safety Day.	Task Force on Public Safety Education does such things as vandalism prevention education and D.A.R.E. program sponsorship.

#### Sanitary sewer service

Town of Brookfield 1990 data shows that 95.2% of the Brookfield/Elm Grove area is served by public sanitary sewer service. This is the highest of the Planning Analysis Areas studied in Waukesha County.<sup>61</sup> The Town is also within the County Urban Development Area.<sup>62</sup> The Town owns 13.2% of the sewer capacity of the treatment plant that is jointly operated by the Town of Brookfield, the City of Brookfield, the City of Pewaukee, the Village of Pewaukee, and the Village of Menomonee Falls. By the end of the second Quarter of 1998, there were 2,006 sewer customers, 1,997 active customers and 29 who were not hooked up but which the system was ready to serve. A majority of residents are provided with sewer service.<sup>63</sup> The southern portion of the Town is almost fully built out and the existing system will accommodate development on remaining parcels. The northern portion, near Capitol Drive, is mostly conservancy, it does not have sewer and it is not expected to have sewer.<sup>64</sup>

<sup>61</sup> SEWRPC, Waukesha County Development Plan, p. 373.

<sup>62</sup> Ibid, p. 387.

<sup>63</sup> Petitioner's Exhibit 2, Planning and Design Institute, Town of Brookfield Incorporation Study, p. 26.

<sup>64</sup> Ibid, p. 13.

There is an agreement between the Town of Brookfield and the City of New Berlin for sewer extensions. Between 1985 and 1987, the Town installed sewer extensions under I-94 and Bluemound Road to serve the southern part of the Town and it included enough capacity to serve part of the northwestern corner of New Berlin. The Town and New Berlin cost-shared to cover the expense of these extensions and the Town paid for its portion with a state trust fund loan. New Berlin had been paying a fairly high rate (1985 rate) on its debt for the extensions and it decided to settle up in 1997 by providing the Town with a one-time payment (\$1,432,600) which is listed in the Town's 1997 budget under, "Intergovernmental charges for services."<sup>65</sup>

#### Solid Waste

The Town contracts with Superior of Wisconsin for garbage pickup once per week (weekly up-the-drive collection for all single-family through four-family dwelling and condominium units, apartment complexes are not served) recycling pickup, and yard waste pickup once per month in season. Superior charges Town residents a flat fee of approximately \$11 per household per month – this is determined per contract and is not dependent on population according to a representative from Superior of Wisconsin. Yard waste is the only part of the service that is covered by a percentage of the general property tax revenue and the Town recorded this charge in its 1997 budget, \$41,100 for its expenditure item, "Solid Waste Collection and Disposal". Superior uses Superior Glacier Ridge Land Fill in Mayville for solid waste and it takes recyclables to the Waukesha County Material Recovery Facility in the City of Waukesha.<sup>66</sup> The City pays its contracted trash/recyclables hauler by way of the general property tax.<sup>67</sup> For 1998, the rate was \$0.4342 per \$1000 assessed valuation. The City's program includes up-the-drive pickup of trash and collection of recyclables for single-family through four-family dwellings, condominiums and apartment complexes. The City supplements this with a Recycling Center. This center accepts residential yard waste. There is no residential pick-up of yard waste. The Recycling Center will return compost to the residents for no cost. Residents may also take home logs and lumber. Finally, the Recycling Center accepts residential drop off of anti-freeze, tires, motor oil, metal, recyclable paper, corrugated cardboard and construction debris. The City stated that the contractor has the ability to expand service to additional households following a once per week service rate by increasing the number of service units operating on a given day.<sup>68</sup>

#### Water

The Town has a water tower, six wells, two reservoirs and two treatment facilities. By the end of 1998 there were 1,688 total water customers: 1,400 active customers and 288 who were not hooked up but which the system is ready to serve. The northern portion of the Town is not anticipated to have water since the majority of this land is conservancy.<sup>69</sup>

#### Court services

The Town of Brookfield formed a Municipal Court in 1991. The Court includes a part-time judge and full-time clerk. The Court meets twice a month.<sup>70</sup>

---

<sup>65</sup> Personal communication with Town of Brookfield Clerk, Barbara Hartung, April 29, 1999.

<sup>66</sup> Petitioner's Exhibit 2, p. 10; Personal communication with Town of Brookfield Clerk, Barbara Hartung April 29, 1999 and May 26, 1999.

<sup>67</sup> Intervenor's Exhibit C-39, City of Brookfield, Memorandum – Trash/Recycling, October 1998.

<sup>68</sup> Intervenor's Exhibit C-39, City of Brookfield, Memorandum – Trash/Recycling, October 1998, pp. 2-3 and Map.

<sup>69</sup> Petitioner's Exhibit 2, p. 13.

<sup>70</sup> Ibid, p. 9.

### Government

The Town of Brookfield recently created a Town Administrator position. Elected officials include a Town Chairman, Four supervisors, an Assessor, and a Municipal Judge. Appointed positions include an Attorney, Building Inspector, Electrical Inspector, Fire Chief/Fire Inspector, Police Chief, Treasurer, Clerk, Plumbing Inspector and Weed Commissioner. The Town currently has Police, Fire and Highway Departments, as well as a Board of Police and Fire Commissioners and an Emergency Government Director.<sup>71</sup> According to the petitioner's Incorporation Study, more space or reorganization may be necessary if additional permanent staff are added within the Town Hall. The Town has a full suite of codes and ordinances.<sup>72</sup> The Town recently adopted a Stormwater Management Plan. Implementation may require additional public works staff and public investment in proactive maintenance of stormwater basins.<sup>73</sup>

### *Inter-municipal agreements*

Intermunicipal agreements include (Petitioner's Exhibit 2, p. 31):

- The Town of Brookfield, City of Brookfield and City of New Berlin share sanitary sewer expenses.
- There is a sewer and water agreement between the Town and City of Brookfield.
- There is a water agreement between the Town of Brookfield and the City of Pewaukee.
- There is a Police Mutual Aid (Smart Program) throughout Waukesha County.
- There is Fire Department Mutual Aid throughout Waukesha County.
- There is Fire Automatic Mutual Aid between the Town and City of Brookfield.
- There is a verbal agreement regarding winter maintenance on certain roads among the Town of Brookfield, City of Brookfield and Town of Pewaukee.
- The Town of Brookfield and City of Brookfield belong to the Brookfield Convention Bureau
- The Town of Brookfield is discussing potential border agreements with the Cities of New Berlin, Brookfield and Waukesha.
- The Town of Brookfield is discussing stormwater agreements with the Cities of Brookfield, New Berlin, Waukesha and Pewaukee.
- The Town and City of Brookfield are discussing a possible Mosquito Program.

### Parks and Recreation

Eighty-seven acres of parkland are located within Town boundaries including Town parks, schools, county owned areas and parkways (Petitioner's Exhibit 2, p. 10). There are three developed parks in the Town, totaling 43 acres. Amenities include tennis courts, baseball diamonds, softball diamonds, soccer fields, playground structures, enclosed park structures with restrooms, picnic areas, a basketball court, and parking facilities. All are in the Southern section of the Town.

Eble Park, a County park within the Town, includes an ice rink and original farmhouse and barn.

- 1) Marks Park, 700 S Barker Rd (14 Acres)
- 2) Wray Park, (MaryLynn Dr and Jaclyn Dr (11 Acres)
- 3) Brook Park, Brook Park Drive (18 Acres)

According to SEWRPC, a Town the size of Brookfield should provide either "community" or "neighborhood" parks. These range in size from 2.2 acres per 1,000 persons for a community

---

<sup>71</sup> Ibid, p. 26-27.

<sup>72</sup> Ibid, p. 20.

<sup>73</sup> Ibid, p. 26-27.

park and 1.7 acres per 1,000 persons for a neighborhood park. Using the Town's current population, the Town requires 13 acres for a community park and 11 acres for a neighborhood park. Both of these standards are exceeded. The Town currently has 87 acres of parkland, 43 of which are Town parks (including school and county parks). The remaining area consists of boulevards and other smaller spaces.<sup>74</sup>

The Town Parks and Recreation Department compiles a "Recreation Guide" that details recreational activities including the information on how to get involved and how much the activity will cost. The guide is published twice per year, one issue for Fall/Winter and the other for Spring/Summer. As could be expected, the Spring/Summer program offers more activities than in the Fall/Winter. Spring/Summer activities include tennis, soccer, baseball and softball and golf. The Town of Brookfield is an official affiliate chapter of the National Youth Sports Coaches Association (NYSCA). NYSCA is a non-profit organization with over 100,000 members in all 50 states. The coaches certification program covers the areas of psychology, first aid, conditioning, practice organization, and teaching techniques.<sup>75</sup>

Park and recreation news and events are also included in the "Town Tidings" newsletter. Published monthly, this newsletter includes special inserts on such things as July 4<sup>th</sup> picnics and parades. In the June 1998 edition, there was an insert to generate participation in the First Annual Town of Brookfield Garden Bed sponsorship program. The program is administered by the Beatification Committee and the Park and Recreation Department, the two groups that will plant perennial garden beds throughout the Town.

#### Library Service

There is no library in the Town of Brookfield. However, Town of Brookfield residents can use any library in the Waukesha Federated Library System since they pay a county library levy. The following table presents Town of Brookfield residents' usage of the City of Waukesha Public Library and the City of Brookfield Public Library and the associated costs.

**TABLE 11**  
**Waukesha County Federated Library System Data**  
**(Source: City of Waukesha Public Library and City of Brookfield Public Library)**

	City of Brookfield Public Library	City of Waukesha Public Library
1998 total circulation	545,072	1,208,564
1998 total circulations by true nonresidents and percentage of total circulation (true nonresidents are those who do not support a municipal library and thus pay the county library tax)	46,116/8.6%	366,258/30.3%
1998 circulations by Town of Brookfield residents	24,116	32,865
1999 library budget	\$1,711,393	\$2,800,776
1999 amount from county library levy	\$202,063	\$711,135
% 1999 budget expenses to be paid by county library levy	11.8%	25.4%

<sup>74</sup> Petitioner's Exhibit 2, Planning and Design Institute, Town of Brookfield Incorporation Study, p. 28.

<sup>75</sup> Petitioner's Exhibit 25, Town of Brookfield Parks and Recreation Department, 1998 Spring/Summer Recreation Guide, p. 10.

In 1998, true nonresidents such as residents of the Town of Brookfield paid a county library tax rate of 0.265 per \$1,000 of assessed valuation. The total county library levy paid by Town of Brookfield residents in 1998 was approximately \$173,000. As long as Waukesha County municipalities with libraries levy a local tax equivalent or greater than to the county library levy, they may exempt their residents from contributing to the county library levy. The City of Brookfield is able to exempt its residents from this county levy as is the City of Waukesha. City of Brookfield residents paid a local library tax rate of 0.416 per \$1,000 of assessed valuation in 1998 and this amounted to a total levy of approximately \$1,500,000.

In 1999, the City of Brookfield expects to receive \$202,063 from the county levy for its library service and the City of Waukesha expects to receive \$711,135. The Waukesha Public Library's goal is to try to accrue enough revenue from the county library tax to cover the percentage of their budget attributable to nonresident circulation. Waukesha Public Library's Director feels satisfied that the library will be close to achieving this goal in 1999, or coverage of 25.4% of the 30.3% true nonresident circulation.<sup>76</sup>

The county library levy paid by Town of Brookfield residents results in a charge of \$25 per person and the city's library tax results in a \$40 charge per person. The per capita full-equalized value for the two municipalities is nearly identical and the use of library services by residents in each of the two municipalities is also quite similar (in 1998, 11.9 items per person for the City of Brookfield and 9.8 items for the Town). Town residents pay less than City of Brookfield residents for identical library service, even though both communities have a similar "ability to pay" (nearly identical per capita full values), and similar library usage rates.

The Town of Brookfield does not have plans to build a library; therefore if it incorporates as a village, residents would continue to use the Waukesha County Federated Library System and they would continue to pay the standard county library tax rate. If the Town would become part of the City of Brookfield, residents would pay a higher library tax rate.

#### Mail Service

Mail service is provided via post offices in surrounding cities, including Brookfield, Pewaukee and Waukesha.

#### Streets and Maintenance

The two streets that connect the lower portion of the Town to the two northern portions are county-owned and maintained. Maintenance would be similar to current conditions if the Town were to incorporate.<sup>77</sup>

Exhibit C-38, a memoranda from the City of Brookfield Highway Department, states that the city Highway Department provides services including, but not limited to, sweeping, street patching, crack sealing, tree removal, drainage management, snowplowing/ice control and fleet maintenance. The city remarks that in order to provide service to the Town, it would need to hire an additional six to seven new employees and purchase a similar number of patrol trucks in order to facilitate comparable snow plow routes and services. It should be noted that Exhibit C-38 incorrectly states that the Town of Brookfield includes 52 miles of roadway.<sup>78</sup> In actuality, the

---

<sup>76</sup> Personal communication with Jane Ameel, Director of City of Waukesha Public Library, May 13, 1999.

<sup>77</sup> Petitioner's Exhibit 2, Planning and Design Institute, Town of Brookfield Incorporation Study, p. 27.

<sup>78</sup> Intervenor's Exhibit C-38, City of Brookfield Highway Department, Memorandum on Highway Service, October 1998.

Town owns and maintains 34 miles of roadway. Therefore, the calculation of how much additional staff and equipment would be needed to serve the Town is also misrepresented.

#### **DETERMINATION**

The intervening City of Brookfield's adopted and filed a resolution with the circuit court "...indicating a willingness to annex the territory designated in the incorporation petition..." (pursuant to s. 66.014 (6), Wis. Stats.).

Review of City's exhibits and additional information obtained by the Department lead to the conclusion that the City has not documented its ability to serve all of "...the territory designated in the incorporation petition," which means the town in its entirety.

The town has demonstrated its ability to provide adequate levels of service to a majority of the town--namely the Goerkes Corners area. This contiguous area has the majority of the town's population and tax base. It's shape (at least that portion west of Brookfield road) and surrounding topography, such as wetlands, primary environmental corridors and land elevations, provide for a physical separation from both the City of Brookfield and the town's smaller disparate parts. In addition, the town borders surrounding Goerkes Corners area have changed little in the past 30 years. The town government center—fire and police stations, public works and administrative services—are all located within this area, and the entire area is within one school district: the Waukesha Public School District. On the whole the town offers quality service to this area.

However, the four disparate parts of the town, as well as that part of the town in PLS Section 28, and the Greenfield Road parcels are more difficult for the town to serve due to their shape and physical separation from the core area. The Town's small widely dispersed parts do not relate to one another; they have varied service needs, land uses and community character. They are in a different school district, Elmbrook School District, than Goerkes Corners—except that part in PLS Section 28. Therefore, these dispersed town parts have more homogeneity and connection with the City of Brookfield than the Town of Brookfield; moreover, the city is in a better position to provide services. The City of Brookfield has submitted evidence that it has the capacity to provide the needed infrastructure and services to these parts of the town should they be attached to the city.

The Town's fire service, land use planning, and zoning services are offered at very basic levels, especially given the existing amount of urbanization and tax base within the town. The City Brookfield has shown a commitment to the Capital Drive area with its Capitol Drive Corridor Study Number Two, which establishes a vision and regulatory path for future development. The city's police department is better equipped to serve this area. Although, the Town has submitted exhibits that show the Town's portion of Capitol Drive has few police calls, police service needs will be increasing as the area develops. Likewise, the City's Fire Department is in a better position to service a Capital Drive area—especially when a City fire station planned near this area is built—that will predictably need higher levels of serve as it develops more intensive land uses. City and Town Fire Departments sometimes provide overlapping service and the City is able to provide staffing on a 24-hour basis 365 days per year. The Department recommends that the Town and City Fire Departments continue to discuss the consolidation matter further and conduct additional analysis in order to make the most informed decision possible that will satisfy both parties.

The Town has show no intention to replace the planning and zoning services of the Waukesha County Park and Planning Department that would be lost with incorporation. The Town has not

budgeted money for planning for years, it has no planning staff, and it has given evidence that this situation would continue with incorporation. The City of Brookfield Planning Department has the ability to provide planning and zoning services that the Town of Brookfield does not provide, but which are needed given the amount of urbanization within the Town. Similarly, current land use related issues in the town, such as traffic congestion, the predictable development pressures on Capital Drive and future land use succession on Blue Mound Road, show that planning and zoning services are needed. Furthermore, the redundancy of fire departments for both the town and city is another service that should be enhanced or restructured by the town regardless of incorporation. In fact, consolidation of services with the City of Brookfield, or perhaps another adjoining community, might improve services.

Absent additional information expressly stating how the City would supplant or enhance the services now provided by the Town for the core area, it is impossible for the Department to find that the city is prepared to serve the entire territory, including the core, petitioned for incorporation, or that on the whole, the services provided to the core are contrary to what is needed or desired by the core-area residents. The Town core—Goerkes Corners excepting portion in PLS Section 28—is on the whole more than adequately served by the Town of Brookfield (with the exceptions noted elsewhere in this determination). Therefore, although the City has show it can better serve the area of the town outside of Goerkes Corners and PLS Section 28, the Town's service to Goerkes Corners makes it impossible for the Department say the City can better serve the entire Town of Brookfield. The issue here is the statutory standard "needed or desired compared to... the level available from a contiguous municipality which files a certified copy of a resolution as provided in s. 66.014, Wis. Stats." Therefore, the Department finds that the Town has met this standard.

## SECTION 2(c) "CHARACTERISTICS OF THE TERRITORY"

### *STANDARD TO BE APPLIED*

"The impact, financial and otherwise, upon the remainder of the town from which the territory is to be incorporated." Section 66.016 (2) (c), Wis. Stats.

### *ANALYSIS*

This standard does not apply because it is the entire Town of Brookfield which is the subject of this incorporation proceeding. Therefore, the Department determines that this standard has no effect with respect to this incorporation petition.



## SECTION 2 (d), "IMPACT UPON THE METROPOLITAN COMMUNITY"

### *STANDARD TO BE APPLIED*

"The effect upon the future rendering of governmental services both inside the territory proposed for incorporation and elsewhere within the metropolitan community. There shall be an express finding that the proposed incorporation will not substantially hinder the solution of governmental problems affecting the metropolitan community." (Section 66.016(2)(d), Wis. Stats.)

### *ANALYSIS*

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

The metropolitan community for this determination includes the petitioners and the City of Brookfield and the City of Waukesha (both of whom are contiguous to the proposed incorporated area and filed motions to intervene). Other potentially affected municipalities within the larger Milwaukee/Waukesha County Metropolitan area include the City of New Berlin, the Village of Pewaukee, and the City of Pewaukee as well as the Villages of Menomonee Falls, Elm Grove, Lannon, and Sussex. Unincorporated areas include the Town of Waukesha and the Town of Lisbon, however, this determination discerns no primary impact on these two towns.

Issues to be discussed under the "metropolitan impact standard" include a broad look at extraterritorial intergovernmental issues, including municipal services. These issues include whether land use plans have been adopted either by the county or by neighboring jurisdictions that may suggest how the territory petitioned for incorporation would otherwise be developed and served; whether there is a basis for potential conflict in the community visions encompassed by these plans; and the potential for annexation and intergovernmental service impacts triggered either by the petitioners or by neighboring jurisdictions.

An important question is whether the level of services, quality of planning, and existing ordinances of the City of Brookfield could reasonably apply to territory of the Town of Brookfield, and conversely, are these systems - which arguably could be said to tangentially affect the metropolitan area - likely to be adversely affected if incorporation occurs? This section concludes with a brief analysis of how governmental and intergovernmental services within the region may be affected by the proposed incorporation.

The City of Brookfield, intervening in opposition to the proposed incorporation, filed a "willingness to annex" petition with the circuit court. It is claiming potential harm if this incorporation were to occur. This topic will be addressed in subsequent paragraphs as it relates to the metropolitan context as defined above. The City of Waukesha is also an intervenor, but has only expressed general concerns. The City Attorney from the City of New Berlin contacted the Department, and indicated that the City felt that it would not be affected by the incorporation and

chose not to participate in the proceedings.<sup>79</sup> This section concludes with an analysis of how governmental and intergovernmental services for the immediate incorporated neighbors may be affected by the proposed incorporation.

#### Municipal Plans and Extraterritorial Issues

In past “metropolitan” determinations (for example, Grand Chute (1985), Allouez (1985) and Pewaukee (1991)), adopted comprehensive plans indicating the territorial land use and public service programs and goals of adjoining municipalities were taken into account by the Department in arriving at its conclusions. By analyzing and weighing the consequential impacts of the proposed incorporation on adopted municipal plans and ordinances, and where appropriate, county plans and ordinances, the Department accounted for and recognized the existing incorporated status of those municipal neighbors who could potentially be affected by the proposed incorporation, as well as the potential for issues to affect the larger community as a whole. Other than the various corridor studies (which are themselves very significant, as discussed in subsequent paragraphs), the City of Brookfield has not indicated how it would treat, in an urban planning and regulatory context, the Goerkes Corners core area of the town were it to achieve jurisdictional responsibility. Similarly, the City of Waukesha’s adopted Land Use Plan for the City of Waukesha Planning Area:2010 (SEWRPC, 1996) **excludes** the Town of Brookfield from the “Land Use Plan for the Waukesha Planning Area:2010,” Plan, Map 57, p. 210. And the adopted City of New Berlin Land Use and Urban Design Plan for the City of New Berlin: 21010 (SEWRPC, April, 1987) similarly omits extraterritorial intent for the Town of Brookfield.

The recent decision by the Department regarding the incorporation of the neighboring City of Pewaukee (Incorporation of the Town of Pewaukee as a City of the Third Class (December, 1998)), is instructive, as we note that SEWRPC, A Development Plan for Waukesha County Wisconsin (1996), serves to harmonize many of the regional-type issues affecting the Town of Brookfield and the surrounding community. The Town and City of Brookfield participated directly in the preparation of that document, and the City’s land use plan, although outdated, and augmented by several recent detailed corridor studies (referenced in the Bibliography of this determination), is deemed by SEWRPC to be substantially consistent with the recommended county land use plan (A Development Plan..., p. 545). The Town of Brookfield has not prepared and adopted a land use plan. However, the Town’s “Zoning District Map” (Exhibit 22 (PDI Report, p. 25) is substantially in conformance with “Map 87, Recommended Land Use Plan for Waukesha County” (A Development Plan..., p. 361).

Major capital-intensive facilities, such as public sewer and transportation systems, are similarly in compliance through the coordinating efforts and regulatory authority visited upon SEWRPC in its guise as the WDNR-designated Area-wide Water Quality Management Authority for all sewer-service and treatment issues, and as the WDOT-designated Metropolitan Planning Organization for transportation planning and implementation issues. So what is left to try to resolve are particular land use and service issues that affect the intervening incorporated neighbors.

<sup>79</sup> But as the Department reviewed the Greenfield Avenue corridor issues, it became apparent that the N1/4 of PLS Section 6, T.6N.-R.20E., was by platting, soils, topography, presence of an environmental corridor, separation by Greenfield Avenue, and ability to serve with sewer by Town of Brookfield Sanitary District Number 4, actually homogenous with the petitioners. Under the right political circumstances, and with the participation of the residents involved, this area could conceivably become the subject of boundary discussions between the town and the City of New Berlin, should they choose to review and discuss this matter. This issue has not been discussed by the Department with the elected officials of either the City or the Town.

### Affect of Possible Incorporation Upon Surrounding Municipalities

Should incorporation occur, further annexations by the surrounding municipalities would be precluded. This affects the City of Brookfield on the eastern and northern border and the City of Waukesha on the western border (both of whom intervened in this petition), as well as the City of Pewaukee to the west, the City of New Berlin to the south and the Village of Menomonee Falls to the north. Existing statutes provide, should the affected local units of government concur, for boundary modifications using either ss. 66.022, 66.023, or s. 66.30, Stats. (boundary change by stipulation and order – followed by subsequent annexation, by cooperative plan and agreement allowing exchange/transfer of territory according to a plan jointly arrived at by the two local governing bodies and approved by the state, or by intergovernmental agreement – followed by annexation (each of these agreements is more fully described by materials developed by this Department and available upon request).

There is also the possibility of consolidating the Town of Brookfield with the City of Brookfield using s. 66.02, Wis. Stats. In this scenario, two or more municipalities could consolidate initiated by successful referenda in each community, and subsequent review and approval by the Department (when a township is involved). These statutory options are also available for use by any of the other contiguous incorporated and unincorporated units of government in the Brookfield area.

For some services, the Town has demonstrated the ability to provide adequate levels of service to a majority of the town – principally the Goerkes Corners area. The Town submitted evidence that it has entered into intergovernmental agreements for the provision of sanitary sewer and water, mutual aid agreements for police and fire service, road maintenance, and management of the Brookfield Visitor's Bureau (Exhibit 2 (PDI Report), p. 31), and other exhibits from the town). The town also indicated that it was in discussion regarding agreements for stormwater management with surrounding municipalities.<sup>80</sup>

If broad regional issues of significance, such as adherence to the general regional land use plan, transportation system plan (for moving vehicles and providing transit, where feasible, throughout the region), and assurance that water quality standards are met through proper sewer service area planning, which also identifies and protects remaining natural resources of local and regional importance, then what are to be the issues of importance at the local intergovernmental level? These services, in brief, appear to be fire service, and urban design along with municipal planning and zoning administration, and public sewer and water supply, which are adequate if only Goerkes Corners minus the town area in Section 28 is considered. These issues become significant because of the territorial disparities due to the irregular boundaries of all of the seven town areas that create land use and service conflicts, and result in land use conflicts and the continual squabbles and inter-jurisdictional friction over how to resolve them. Incorporation of the Town as it is presently constituted would simply perpetuate the problem, as the Town does not appear, at this time, to be willing to acknowledge and address these issues (Ex. 2 (PDI Report), p. 31).

---

<sup>80</sup> . This may demonstrate a stated ability (which is open to challenge as, for example, the town only passes on some \$62,000 of the some \$427,000 collected from "room tax" collected (Exhibit 14, "Town of Brookfield Waukesha County, Wisconsin, Financial Statements and Independent Auditor's Report, Year Ended December 31, 1997," p. 20), yet implies in Exhibit 2, page 31, that it passes the room tax on to support the Brookfield Convention Bureau) to possibly work cooperatively to address issues of regional significance, but it is possible that other statements made on page 31 are similarly overstated.

Both the City of Brookfield and the City of Waukesha assert that the current boundaries of the proposed incorporated area result in unnecessary duplication of facilities, equipment and other costs to provide fire and other services to the area. The Town did not specifically address this issue but, in spite of the apparent need for the City of Brookfield to locate an additional fire station in the western part of the City to serve the territory if annexed, it appears that the territory would be more efficiently served by the City of Brookfield based on exhibits and additional information requested and submitted to the Department by the parties.

The City of Brookfield has submitted sufficient evidence to establish that it has the necessary infrastructure and urban planning, service (including library service), and administrative mechanisms in place to provide services to the Town territory if it were attached to the City. This is particularly true for the outlying town areas such as the Greenfield Avenue, Capitol Drive, and Holly Crest/Gaywood areas, and to a certain extent the town's Blue Mound Road corridor territory in PLS Section 28. The City, Waukesha County, and the state are already providing for the vehicular connectivity to these areas, which in itself presents obvious tax equity issues. On the other hand, these statements do not necessarily apply to the core – Goerkes Corners area of the town. It is important to remember this distinction should boundary discussions between the town and intervenors ever resume. Simply put, the proposed village is overlaid by the regional transportation grid, and regional commercial/industrial employment grid, and recognizes that instead of serving its' estimated population of ~6,200, in reality it claims to serve 250,000 persons that pass through it daily. Services and policies that are adequate for 6,200 are not adequate for 250,000!

The history of efforts to deal with service issues between the Town of Brookfield and its neighbors have resulted in several examples of redundant or inconsistent service provision to residents in the territory, inconsistent zoning and land uses, as well as inconsistent standards for site and roadway development, between the town and bordering communities, which are documented in the Exhibit List, and discussed in the various transportation corridor studies.

While there have been some examples of cooperative efforts to deal with regional issues, such as the joint effort between the City and the Town of Brookfield to expand Barker Road (where the Town has been commended for its cooperation and participation in the design and implementation of the South Barker Road expansion project), there is also a history of isolated planning that results in poor inter-municipal relationships. This has been particularly evident in efforts to deal with development along Capitol Drive and Bluemound Road

Capitol Drive serves as a major regional transportation corridor. In this gateway to the Brookfield area, separating through traffic (according to SEWRPC, some sections of Capitol Drive have the highest traffic volumes of any arterial in the Milwaukee region) while maximizing the potential for commercial and industrial development, and ensuring appropriate land use regulation of existing development along this corridor, is a significant challenge, and should be a critical concern. The City of Brookfield prepared a Capitol Drive Corridor Study Number Two to establish a vision and determine appropriate regulatory devices for its future development. The Town of Brookfield has just now entered into its own, independent (from the City of Brookfield) planning process for this corridor. While both the Town and the City invited the participation of the other in the planning process, these two plans have been poorly linked. The uncoordinated planning of this area has resulted in inconsistent standards regarding the need for frontage or service roads, access onto Capitol Drive, and other land use and development standards (Exhibit C 32, and see the complete copy requested of the City by the Department - Capitol Drive Corridor Study Number Two (April 1999)).

Similar development problems are also exhibited along Blue Mound Road and Greenfield Road, where studies similar to Capitol Drive have been prepared by the city. Development along Blue Mound Road serves as one of the region's major retail and commercial areas. The Town of Brookfield does not appear to have participated in highway expansion projects proposed by the city and state in order to provide turn lanes, frontage roads, bike lanes, and other needed improvements along this corridor. Conflict between the Town and the City of Brookfield over the development of this corridor is illustrated in Exhibit C 31. In fairness to the town, some of this is past history, and the current attitude of the Town may be more fairly characterized by how it approached the reconstruction of South Barker Road.

Similar land use and jurisdictional conflicts have occurred between the City of Waukesha and the Town of Brookfield over developments along the south side Mooreland Road, where the city annexed parcels for Steinhafel Furniture, and the Russ Darrow auto dealership (in this example, the Town and City were advised by the Department, after the Department met with the participants and viewed the site, that the Russ Darrow annexation was consistent with the public interest due to the topographic, situs and structural characteristics of the area – virtually a zone of transition that the town was unable to plan for and respond to at the time). To the Town's credit, it is now informally discussing with Waukesha County how best to deal with this transitional area, and how best to provide protection for the nearby residential neighborhood.

These are just some of the very complex issues for which a few short paragraphs cannot do justice. Were the town to incorporate, it would lose the planning and zoning advisory services of Waukesha County that it currently uses (to its credit). Yet hearing testimony by the town suggested that it saw no need to upgrade its planning and development capacity (as the town was nearly fully developed). What has become apparent to the Department after sifting through the massive number of exhibits and information cited in the bibliography, is that on the whole, and with respect to the Goerkes Corners area only, the town is performing above the level normally expected for a municipality of its population and size. But when the regional transportation and various intergovernmental service issues and needs faced by the incorporated neighbors are overlaid, combined with the geographic and regulatory isolation of the other six scattered areas for which the town seeks incorporation, then the situation changes. Aside from the presence of irregular boundaries and isolated town areas, for which there are ample case law precedents for denying incorporation for that reason alone, the service issues are also significant and compelling. Irregular boundaries coupled with differing visions over the type and appropriate level of service create significant interjurisdictional problems for the incorporated neighbors that the Department cannot ignore.

As discussed at the outset of this Determination, statutes and case law provide the Department with discretion as to how standards s. 66.016 (2) (a-d), Stats. are interpreted. Section 66.016 (2) (d), Stats. relates to issues affecting the metropolitan community, and not necessarily those issues that just affect the petitioner and one other municipality. In past determinations, the Department has considered boundary and related service issues within the larger context implied by the word "metropolitan," because such issues as the delineation of sewer service area boundaries designating territory to be served by public sanitary sewer, and metropolitan planning organization transportation planning, project delineation, and enumeration, while they may just affect a town or city and village, have the capability if conflict is not resolved, of affecting more than just those two jurisdictions. The Town admits that every day it serves 250,000 people. This rationale explains why boundaries and service issues were also discussed under the "metropolitan impact" standard in Pewaukee (1991), when the Department rejected that petition to incorporate (to the credit of the now City of Pewaukee, the then Town completed boundary agreements and

territorial transfers with its incorporated neighbors, thereby resolving the interjurisdictional conflicts, and received a positive incorporation review from this Department in December, 1998).

In the present case, the City of Brookfield filed a s. 66.014 (6), Wis. Stats., resolution. This resolution triggered an analysis of administrative, public works, safety and other services performed by the City of Brookfield, along with a comparison between the government structure and services with the structure and services proposed to be provided by the petitioners.

Both the City of Brookfield and the City of Waukesha, as intervenors, expressed concerns regarding the jurisdictional confusion in the provision of police, fire and safety services to the current town territory because of the fragmentation and irregular boundaries that exist in the current town. Permanently fixing these boundaries by incorporation would make it more difficult and further limit the options available to deal with these issues.

#### ***DETERMINATION***

The major difficulties relating to the affect of incorporation on the metropolitan area, are due to the fragmented nature of the 7 areas of the proposed village limits. This fragmentation raises the issue of the ability of the regional transportation system to adequately connect the different segments of the proposed village, and a fiscal equity consideration as to whether they should connect these disparate parts. Residential developments in the central and northern segments of the proposed village have better access to services and resources in the Cities of Brookfield or Waukesha than to those resources available in the southern section of the Town. These fragments also result in inconsistent land use and planning efforts along major transportation corridors where multiple jurisdictions exercise control over fragmented corridor sections and where there is a failure to cooperatively plan for the urban design and regulation of these areas which fall within multiple jurisdictions. The Department determines that it cannot find that "the proposed incorporation will not substantially hinder the solution of governmental problems affecting the metropolitan community," and that, therefore, this criterion is not met.

## NOTICE OF APPEAL INFORMATION

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

As required by s. 227.48 (2), Stats., the following notice is served on you as part of the Department's decision:

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

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

This notice is part of the decision and incorporated therein.

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

#### **227.49 Petitions for rehearing in contested cases.**

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

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

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

(a) Some material error of law.

(b) Some material error of fact.

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

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

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

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

#### **227.49 - ANNOT.**

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

This section does not require service of a petition for rehearing within 20 days of service of the order; only filing. *DOR v. Hogan*, 198 W (2d) 792, 542 NW (2d) 148 (Ct. App. 1995).

#### **227.53 Parties and proceedings for review.**

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

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

2. Unless a rehearing is requested under s. 227.49, petitions for review under this paragraph shall be served and filed within 30 days after the service of the decision of the



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

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

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

1. The tax appeals commission, the department of revenue.
2. The banking review board, the division of banking.
3. The credit union review board, the office of credit unions.
4. The savings and loan review board, the division of savings and loan, except if the petitioner is the division of savings and loan, the prevailing parties before the savings and loan review board shall be the named respondents.
5. The savings bank review board, the division of savings and loan, except if the petitioner is the division of savings and loan, the prevailing parties before the savings bank review board shall be the named respondents.

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

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

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

227.53 - ANNOT.

History: 1971 c. 243; 1975 c. 94 s. 3; 1975 c. 414; 1977 c. 26 s. 75; 1977 c. 187; 1979 c. 90, 208, 355; 1985 a. 149 s. 10; 1985 a. 182 ss. 37, 57; Stats. 1985 s. 227.53; 1987 a. 27, 313, 399; 1991 a. 221; 1995 a. 27; 1997 a. 27.

[From WisLaw™ March 1, 1998 Release. Unofficial text from Wisconsin Statutes and Annotations, 1995 – 96. Updated through 1997 Wis. Act 60, being all legislation enacted and all Supreme Court Rules adopted as of March 1, 1998.]

DEPARTMENT CONTACTS MADE DURING RESEARCH AND ANALYSIS  
*(includes contacts cited in footnotes within the document)*

Beth Baldwin, Elmbrook School District, Computer Services and Transportation, 4/15/99.

Alice Schultz, Waukesha School District, Census Office, 4/19/99.

Barbara Hartung, Town of Brookfield Clerk, 4/29/99, 5/26/99.

Todd Weik, Town of Brookfield Chairperson, 5/13/99.

Joy Smojer, Principal of Pleasant Hill School, Waukesha School District, 5/19/99.

Thomas Hennen, Jr., Director, Waukesha County Federated Library System, 5/25/99.

Alvin Atkinson, President, Town of Brookfield Sanitary District #4, 5/28/99.

Ellen Spenser, Wisconsin Department of Natural Resources, Bureau of Endangered Resources, 5/25/99.

Dick Mace, Waukesha County Parks and Planning Department, 5/26/99 and 6/3/99.

Bill Stauber, Southeastern Regional Planning Commission, 5/26/99.

Daniel Ertl, Director, City of Brookfield Planning Department, 5/27/99 and 6/1/99.

Dennis Bubenik, Finance Director, City of Brookfield, 5/27/99.

Mike Treviranus, Wisconsin Department of Revenue, 5/28/99.

Mike Zillmer, Wisconsin Department of Natural Resources-Milwaukee Office, 6/1/99.

Bonita Bindl, Wisconsin Department of Revenue, Bureau of Equalization, 6/1/99.

Lois Stoerzer, Wisconsin Wetlands Inventory, Wisconsin Department of Natural Resources, 6/1/99.

Jerry Keoper, Assistant Superintendent of Streets, City of Brookfield, 6/2/99.

Mary Jo Lange, Interim City Engineer, City of Brookfield, 4/30/99 and 6/2/99.

City of Brookfield Fire Chief Tim McGrath, 4/26/99.

Town of Brookfield Fire Chief Skip Sharpe, 5/5/99.

Jane Ameel, Director of City of Waukesha Public Library, 5/13/99.

Don Martenson, Southeastern Regional Planning Commission, 3/31/99.

Kathleen Cady Director of Economic Development for the City of Brookfield, 4/6/99.

James Harris, WisDOT, 4/8/99.

## BIBLIOGRAPHY\*

Camiros, Ltd. and Ayres Associates, Greenfield Avenue Corridor Plan, Prepared for the Cities of Brookfield and New Berlin, December 13, 1996.

City of Brookfield. Brookfield Public Library Annual Report, 1997.

City of Brookfield. Comprehensive Annual Financial Report, 1997.

City of Brookfield. Capitol Drive Corridor Study, Number Two, April 1999.

Harland Bartholomew and Associates, Inc., North Avenue Corridor Study for the City of Brookfield, 1988.

Hey and Associates, Stormwater Management Plan for the Town of Brookfield.

Howard, Needles, Tammen and Bergendoff, A Three Phase Land Use Study of the Bluemound Road-Wisconsin Avenue Development Corridor for the City of Brookfield, May 1986.

Landscape Architects, Inc., Town of Brookfield Bikeway Master Plan, February 1997.

Ruekert and Mielke, Inc. Draft Comprehensive Outdoor Recreation Plan for the Town of Brookfield, July 1998.

Ruekert and Mielke, Inc. Comprehensive Outdoor Recreation Plan for the Town of Brookfield, 1989.

Ruekert and Mielke, Inc. Pavement Management System for the Town of Brookfield, March 1999.

Southeastern Wisconsin Regional Planning Commission, A Development Plan for Waukesha County. Community Assistance Planning Report No. 209, August 1996.

Southeastern Wisconsin Regional Planning Commission, A Land Use Plan for the City of Waukesha Planning Area: 2010. Community Assistance Planning Report No. 169, 1993.

Southeastern Wisconsin Regional Planning Commission, A Land Use and Urban Design Plan for the City of New Berlin: 2010. Community Assistance Planning Report No. 111, 1987.

Southeastern Wisconsin Regional Planning Commission, A Park and Open Space Plan for the City of Brookfield, 1991.

Southeastern Wisconsin Regional Planning Commission, A Park and Open Space Plan for the City of New Berlin, 1981.

---

\* Although not all of these items are cited directly in footnotes within the text, they should be considered part of the record of decision in this matter, as they form the background so necessary for considering the situs, structure, and intergovernmental relationships within the region.

Southeastern Wisconsin Regional Planning Commission, A Park and Open Space Plan for the Town and Village of Pewaukee, 1980.

Southeastern Wisconsin Regional Planning Commission, A Park and Open Space Plan for Waukesha County, 1989.

Southeastern Wisconsin Regional Planning Commission, A Regional Transportation System Plan for Southeastern Wisconsin:2020, Planning Report No. 46, December 1997.

Southeastern Wisconsin Regional Planning Commission, A Transportation Improvement Program for Southeastern Wisconsin, 1998-2000, December 1997.

Southeastern Wisconsin Regional Planning Commission, "Record of Public Informational Meetings and Public Hearings, Preliminary Regional Natural Areas and Critical Species Habitat Protection and Management Plan for Southeastern Wisconsin." May 12, 1997 to June 13, 1997.

Southeastern Wisconsin Regional Planning Commission, Regional Water Quality Management Plan , City of New Berlin, March 1999.

Southeastern Wisconsin Regional Planning Commission, Sanitary Sewer Service Area for the City of Waukesha and Environs. Community Assistance Planning Report No. 100, June 1985.

Southeastern Wisconsin Regional Planning Commission, Sanitary Sewer Service Area for the City and Town of Brookfield and the Village of Elm Grove. Community Assistance Planning Report No. 109, November 1991.

Southeastern Wisconsin Regional Planning Commission, Sanitary Sewer Service Area for the Town of Pewaukee Sanitary District No.3, Lake Pewaukee Sanitary District, and Village of Pewaukee. Community Assistance Planning Report No. 113, June 1985.

Southeastern Wisconsin Regional Planning Commission, Waukesha County Agricultural Soil Erosion Control Plan. Community Assistance Planning Report, No. 159, 1988.

Town of Brookfield. 1999 Budget.

Town of Brookfield. Building Inspector Report 1990-1998, October 1998.

Town of Brookfield. "Data Regarding Town of Brookfield Assessed Values on Properties east of Brookfield Road." (Faxed by Town Clerk) May 26, 1999.

Town of Brookfield. Financial Statements and Independent Auditor's Report for Year Ending December 31, 1997. Prepared by Conley-McDonald, 1997.

Town of Brookfield. "1997 Financial Report Form C" (Copy as submitted to the Wisconsin Department of Revenue). May 13, 1998.

Waukesha County Department of Parks and Land Use. 1997 Waukesha County Land Atlas and Plat Book. Cloud Cartographics, 1997.

Wisconsin Department of Natural Resources. Statewide Comprehensive Outdoor Comprehensive Plan, 1991-1996, 1991.

Wisconsin Department of Natural Resources. Wisconsin Wetland Inventory Classification Guide, February 1992.

Wisconsin Department of Natural Resources. "Wisconsin Wetland Inventory, Town 7 North, Range 20 East, Waukesha County, Wisconsin," October 1981.

Wisconsin Department of Revenue, Division of State and Local Finance, Bureau of Local Financial Assistance. Revenues and Expenditures by Wisconsin Counties, Cities, Villages, and Towns 1997. Bulletin No. 97, February 1999.

Wisconsin Department of Revenue, Division of State and Local Finance, Bureau of Local Financial Assistance. Town, Village, and City Taxes Levied 1995—Collected 1996.

Wisconsin Department of Revenue, Division of State and Local Finance, Bureau of Local Financial Assistance. Town, Village, and City Taxes Levied 1996—Collected 1997.

Wisconsin Department of Revenue, Division of State and Local Finance, Bureau of Local Financial Assistance. Town, Village, and Cities Taxes Levied 1997—Collected 1998.

Wisconsin Department of Transportation, 1998 Wisconsin Highway Traffic Volume Data, March 1999.

United States Department of Agriculture, Soil Conservation Service. Soil Survey of Milwaukee and Waukesha Counties, Wisconsin, 1971.



## Bikeway Development Schedule

Bikeway Segment	Schedule
Barker Road	Phase 1: South of Blue Mound Road to be rebuilt: 1997-1998 Phase 2 North of Blue Mound Road to be rebuilt: 2001 -2002
Davidson Road	Build concurrent with road rebuilding: 1998 - 1999
Wisconsin Avenue	Build concurrent with road rebuilding: 1997-1998
Springdale Road	Build concurrent with road rebuilding. Road to be rebuilt in phases between 1997 and 2002
Poplar Creek	Phase 1: Water Tower Road to Brenner Dr.: 1998 Phase 2: Marx Park to Water Tower Road: 2000
Wray Park Connector	To be built when Fox River Bike Path is built by Waukesha County
Watertown Road- Janacek Road Connector	<i>Unscheduled at this time</i>
Neighborhood Route Signing	1997-2000
Brookfield Road	Build concurrent with Town and City of Brookfield rebuilding of road: 1998
Bluemound Road	2000-2005
Water Tower Blvd	Concurrent with Phase 1 Poplar Creek: 1998
Watertown Road	Build concurrent with rebuilding of Watertown Road: unscheduled



# Bikeway Master Plan

## Plan Key

## Bikeway



### Transit/Bike Lane

A 10-12 foot wide travel lane on a major arterial street or highway, separated from traffic by a strip.



### Shoulder Lanes

A 6-foot wide lanes on each side of a street or highway, separated from traffic by a strip.



### Bike Path in Right-of-Way

6 to 12 foot wide bicycle lane separated from the street, but within the right-of-way.



### Bike Path Off-Road

A 8 foot to 12-foot wide path separated from street.



### Signed Neighborhood Routes

Bike access designated with signs on existing residential streets, without modification of existing roadway.



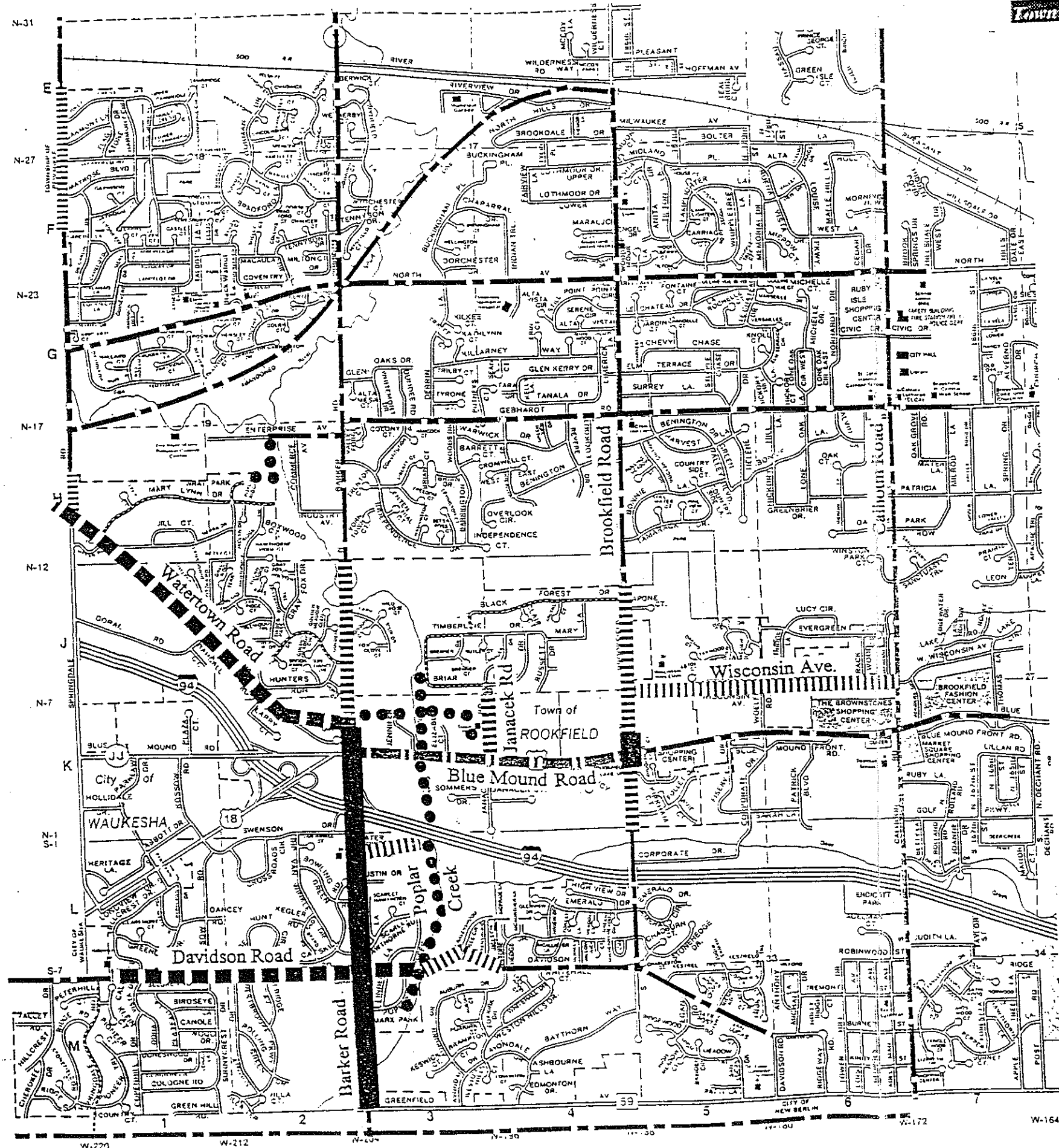
### Concrete Sidewalks

6' wide concrete sidewalks along curb and gutter streets.



### Connecting Bikeways

Existing or planned bikeways that the Town of Brookfield will connect to with its bikeway.










# **PUBLIC TRANSIT ELEMENT OF THE FINAL RECOMMENDED REGIONAL TRANSPORTATION SYSTEM PLAN FOR SOUTHEASTERN WISCONSIN: 2020**

## **LEGEND**



### **RAPID TRANSIT SERVICE**

-  BUSWAY FACILITY--UNDER CONSIDERATION  
IN WISCONSIN CORRIDOR STUDY
-  BUS SERVICE IN MIXED TRAFFIC ON  
FREEWAYS AND SURFACE ARTERIAL  
STREETS AND HIGHWAYS
-  POTENTIAL COMMUTER RAIL--TO BE  
CONSIDERED IN CORRIDOR STUDIES



### **EXPRESS TRANSIT SERVICE**

-  LIGHT RAIL TRANSIT FACILITY--UNDER  
CONSIDERATION IN WISCONSIN CORRIDOR STUDY
-  BUS SERVICE IN MIXED TRAFFIC  
OR EXCLUSIVE LANES ON SURFACE  
ARTERIAL STREETS AND HIGHWAYS

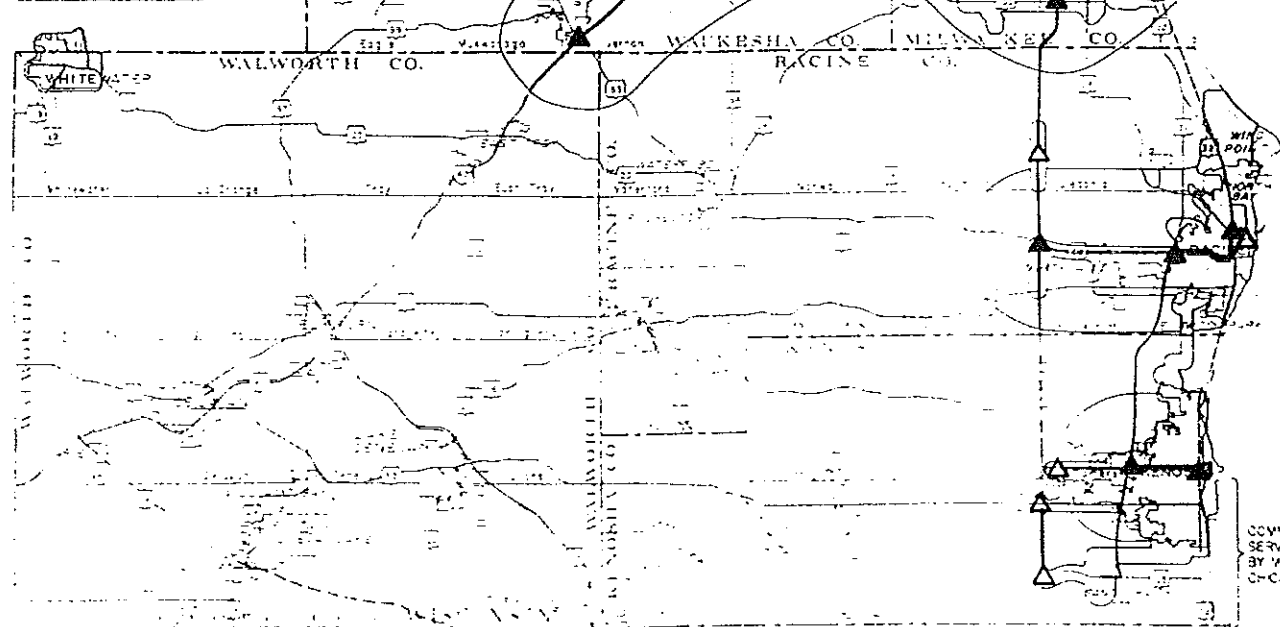
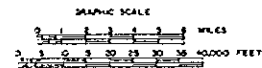
### **TRANSIT STATIONS**

-  WITH PARKING
-  WITHOUT PARKING

### **SERVICE AREA**

-  LOCAL TRANSIT INCLUDING BUT NOT  
LIMITED TO FIXED ROUTE SERVICE
-  RAPID TRANSIT--CONVENIENT  
AUTOMOBILE ACCESS TO  
TRANSIT STATIONS

- NOTE:**
- 1) POTENTIAL ADDITIONAL  
BUSWAY AND LIGHT  
RAIL/EXPRESS BUS  
GUIDEWAY FACILITIES  
ARE IDENTIFIED ON  
MAP 31
  - 2) CORRIDOR STUDIES  
WOULD BE DESIGNED  
TO DETERMINE  
DESIRABILITY OF ALLOWING  
HIGH-OCCUPANCY  
VEHICLES TO USE  
BUSWAYS AND EXPRESS  
BUS GUIDEWAYS

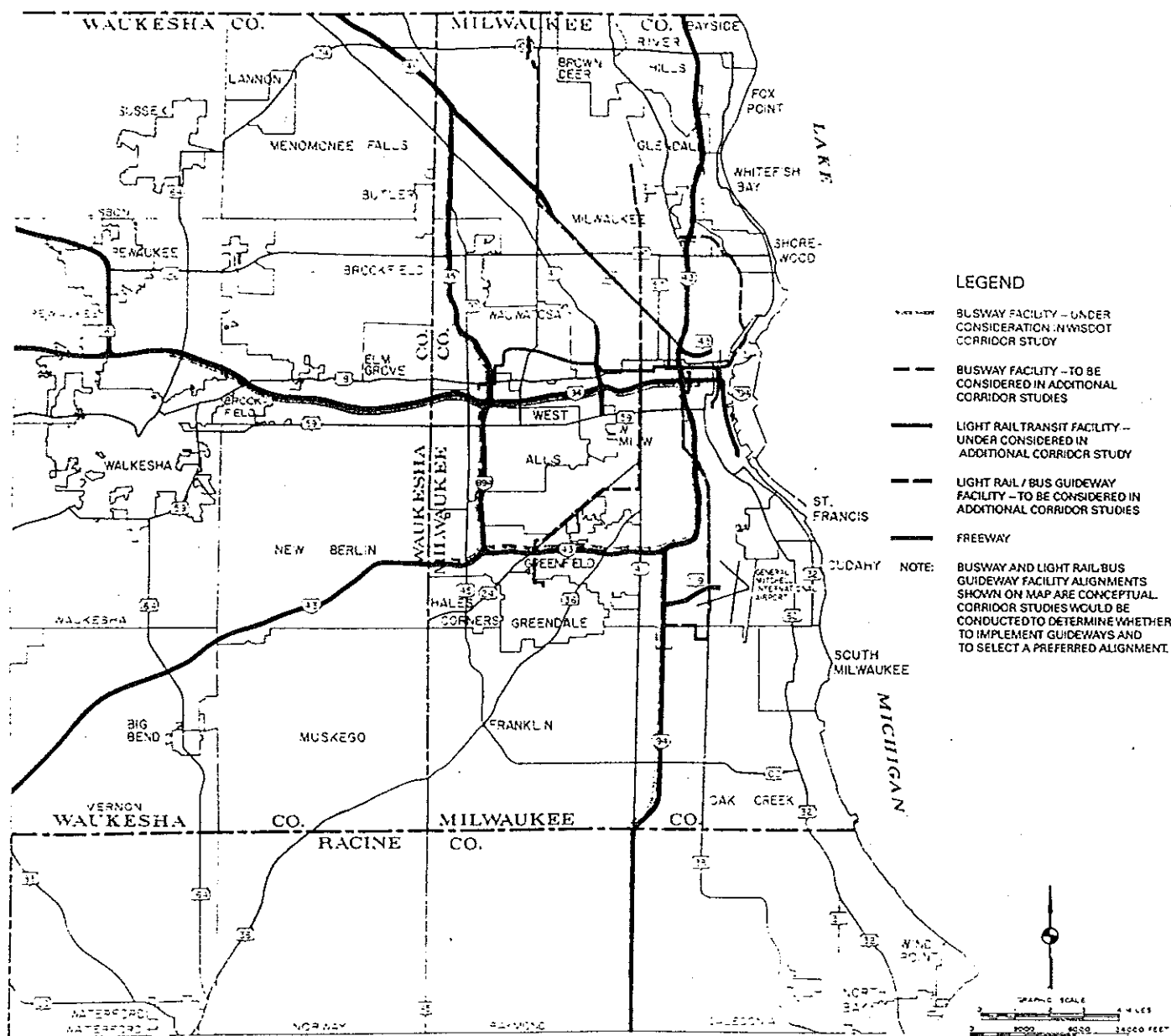


COMMUTER RAIL  
SERVICE PROVIDED  
BY METRA FROM  
CHICAGO

The final recommended 2020 transit system consists of an extensive rapid transit system serving all major Milwaukee central business district travel transit routes particularly in Milwaukee County, and an expansion of local transit service areas with enhancements to incorporate the continuation of local shared-ride taxicab service currently provided in certain smaller urban areas. Visioned under the proposed plan would provide 111,500 revenue vehicle-miles of service per average weekday, or 50 vehicle-hours of service per average weekday, or 61 percent more than in 1995.

Map 31

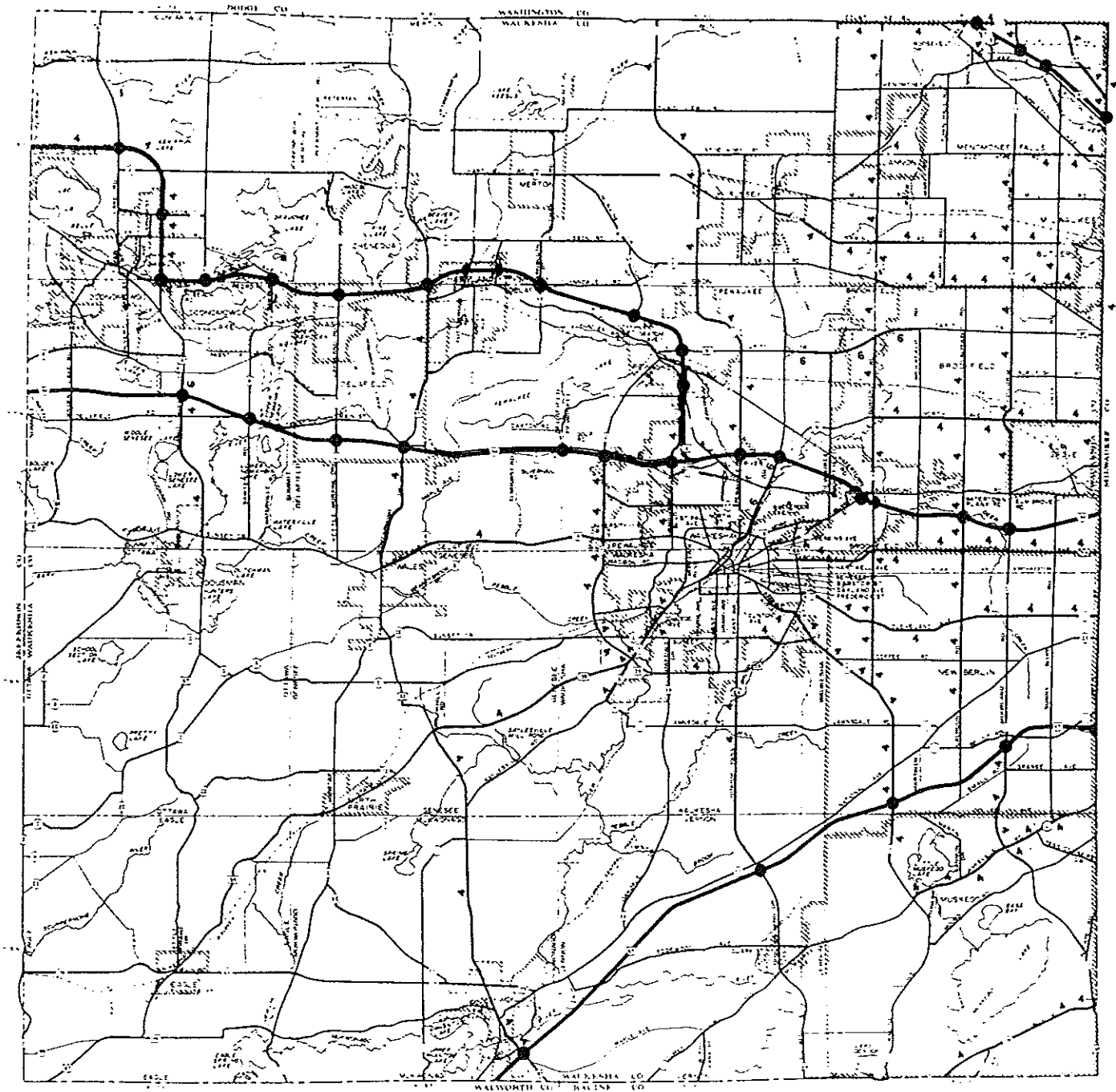
**POTENTIAL BUSWAY AND LIGHT-RAIL/EXPRESS-BUS-GUIDEWAY FACILITIES IDENTIFIED IN THE FINAL RECOMMENDED REGIONAL TRANSPORTATION SYSTEM PLAN FOR SOUTHEASTERN WISCONSIN: 2020**



Under the final recommended regional transportation system plan, rapid transit busway facilities and express transit light-rail facilities would be considered as alternatives to motor-bus transit service over arterial highway lanes. Consideration of such fixed-guideway transit service facilities would be initiated as part of federally required major investment studies for each of the identified corridors. The busway facility, which extends along the IH 94 Corridor from the City of Milwaukee to the STH 164 interchange in Waukesha County, shown on the accompanying map, and the light-rail facility, which extends from Walker's Point through the central business district of Milwaukee to the Milwaukee County Institutions Grounds, with a branch extending along Fond du Lac Avenue to the Capitol Court shopping center, have been acknowledged in the plan as a basis for providing a higher level of service than express bus. It is recognized that the implementation of these fixed-guideway transit facilities depends upon the ultimate outcome of the corridor study currently being conducted by the Wisconsin Department of Transportation. Upon completion of that study, the local units of government concerned, the Wisconsin Department of Transportation, and the Regional Planning Commission would have to affirm the study findings and, if necessary, amend the regional transportation system plan.

Source: SEWRPC.

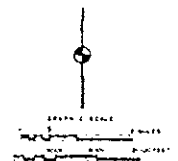
# FUNCTIONAL IMPROVEMENTS TO THE ARTERIAL STREET AND HIGHWAY SYSTEM IN WAUKESHA COUNTY: 2020 FINAL RECOMMENDED REGIONAL TRANSPORTATION SYSTEM PLAN



## LEGEND

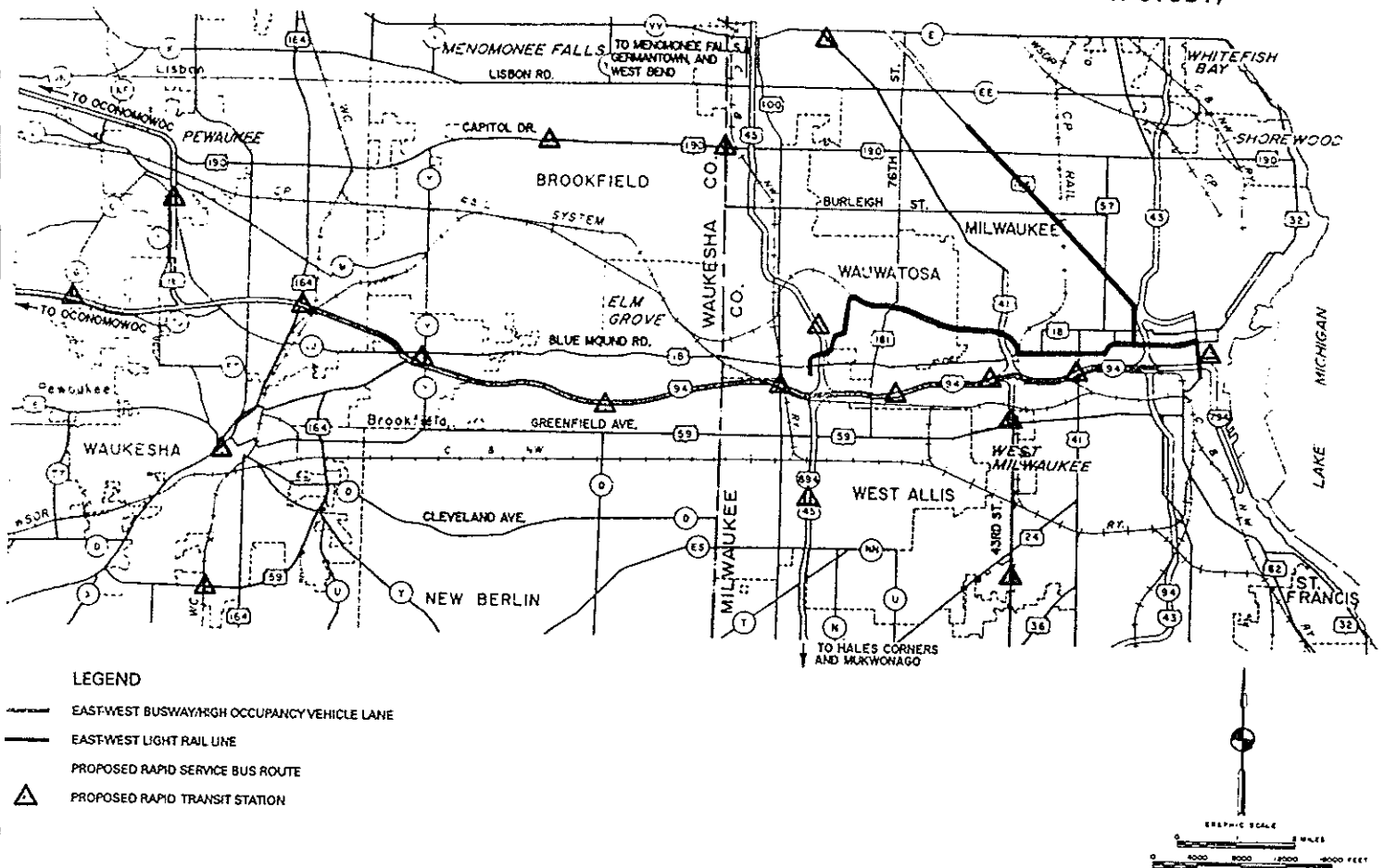
### ARTERIAL STREET OR HIGHWAY

- NEW
- WIDENING AND/OR OTHER IMPROVEMENT TO PROVIDE SIGNIFICANT ADDITIONAL CAPACITY
- RESURFACING OR RECONSTRUCTION TO PROVIDE ESSENTIALLY THE SAME CAPACITY
- 4 NUMBER OF TRAFFIC LANES FOR NEW OR WIDENED AND/OR IMPROVED FACILITY (2 LANES WHERE UNNUMBERED)



Under the final recommended regional transportation system plan, the arterial street and highway system in Waukesha County would be expanded by 59 miles, or 8 percent, from 718 miles in 1995 to 777 miles in the year 2020. The increase in arterial mileage would come about through the construction of 21 miles of new facilities and through the conversion of 38 miles of previously nonarterial facilities to arterial status in order to accommodate expected traffic volumes and to provide the arterial spacing necessary to properly structure planned urban development. The plan would provide for the construction of 21 miles of new arterial facilities, for the widening of 142 miles, and for the preservation of 614 miles of facilities within the County.

**TRANSPORTATION FACILITIES UNDER CONSIDERATION IN THE CURRENT WISCONSIN DEPARTMENT  
OF TRANSPORTATION EAST-WEST TRAVEL CORRIDOR STUDY (MAJOR INVESTMENT STUDY)**



The fixed-guideway transit facilities shown on the accompanying map are acknowledged in the recommended regional transportation system plan as a basis for providing a higher level of service than express bus surface on surface arterials. A corridor study sponsored by the Wisconsin Department of Transportation is currently under way to determine the feasibility of these proposed facilities. Upon completion of that study, the local units of government concerned, the Regional Planning Commission, and the Wisconsin Department of Transportation will affirm the study findings and amend the regional transportation plan if necessary.

Source: SEWRPC.

light-rail transit facility extending from a terminal near the Southridge shopping center in the Village of Greendale and City of Greenfield to and along S. 27th Street and N. 27th Street to a terminus near the intersection of N. Teutonia Avenue and W. Florist Avenue in the City of Milwaukee, a distance of about 14 miles (see Map 41). In addition to potential crosstown light-rail transit service, this facility would serve potential light-rail routes to and from the Milwaukee CBD.

7. Mitchell Field Corridor Major Investment Study  
A major investment study will be required in the Mitchell Field travel corridor for a single proposed facility identified in the recommended regional transportation system plan for further evaluation: a light-rail transit facility extending from the Milwaukee CBD south to General Mitchell International Airport and to a terminal near the interchange of IH 94 and W. College Avenue, a distance of about 10 miles (see Map 42).

## 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 during many long hours despite the constant distractions presented by 10 other incorporation petitions currently under review, requests for legislative analysis, controversial annexations, dispute mediation between municipalities, and other assigned tasks. Robert Zeinemann, Laura Yaffe, and I were present during the Town of Brookfield legislative hearing last October, and Linda Horvath reviewed the hearing tapes. Kassandra Walbrun provided editorial assistance. All of these individuals have participated in site visits to the territory proposed for incorporation, or are otherwise familiar with the territory and region.

George Hall, Director  
Municipal Boundary Review