
STATE OF WISCONSIN

CIRCUIT COURT

KENOSHA COUNTY

In re the Petition to Incorporate the
Village of Powers Lake, Kenosha County

Case No. 96-CV-506

DONNA WALAG, Representative of
the Petitioners for the Incorporation of
the Village of Powers Lake, and said Petitioners

Petitioners

vs.

Town of Bloomfield and
Town of Randall

Intervenors

DETERMINATION OF THE WISCONSIN DEPARTMENT OF ADMINISTRATION

October 15, 1999

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. Stat. Sec. 66.016:

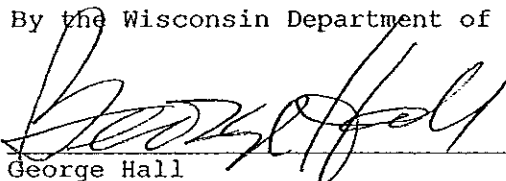
STANDARD 1 (a), Homogeneity and compactness- Not Met
Reasonably developed community center - Not Met

The above conclusions are discussed in greater detail in the body of the DETERMINATION. THE DETERMINATION OF THE DEPARTMENT, as prescribed by s. 66.014 (9) (e) 3, Wis. Stats., is as follows:


Having failed to meet one or more applicable standards for incorporation as set forth in s. 66.016, Wis. Stats., the department finds that the petition as submitted shall be dismissed.

Dated this 12th day of October, 1999.

By the Wisconsin Department of Administration:



George Hall
Director of Boundary Review
Wisconsin Department of Administration



Mark Saunders
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Cc:

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Earnestine Kennedy, Clerk, Town of Bloomfield
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Don Smitz, Chairman, Town of Wheatland
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Commission
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ANALYSIS

I. Introduction

The following analysis and findings relate to the standards to be applied by the Department of Administration as found in §66.016 of the Wisconsin Statutes. A prior petition by residents of the Powers Lake area was reviewed by the Department in 1992 and was found not to have met the statutory standards for incorporation. The present petition for incorporation was filed in Kenosha County Circuit Court in June, 1996. Following resolution of questions pertaining to the validity of the petition, the petition was referred to the Department and a public hearing was held on May 12, 1998. In the 1992 determination, the Department held that the standards of §66.016 (1)(a) relating to homogeneity and compactness were not met. The remaining standards in §66.016(1)(b) and 66.016(2) were found to be met or not applicable. Those standards relate to the territory beyond the core, tax Revenue, impact on the remainder of the town and impact on the metropolitan community. The parties in this action have stipulated that the Department's determination in this most recent incorporation attempt will be limited to a review of §66.016.(1)(a), the remaining standard found to be unmet in the 1992 determination. This statute section reads as follows:

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.

The following pages recount the history of municipal incorporation in Wisconsin, particularly as it applies to the community character requirement. Review of the history is important for a number of reasons. First, because the findings of this determination are entirely devoted to the community character issue, it is critical to develop the foundation and context from which this requirement emerged. Second, Petitioners themselves discuss the historical underpinnings in materials submitted to the Department by citing select portions of the drafter's legislative report. Third, Petitioner's ask the Department to abandon its normal standard of review in favor of a new standard suggested by Petitioners. An examination of the history of incorporation will reveal whether a departure from the current standard is appropriate.

Originally, the Wisconsin State Constitution gave the legislature the power to determine the boundaries for new villages and cities.¹ For many decades thereafter cities and villages required a special private legislative act in order to become incorporated. In 1872, the Constitution was amended to allow villages to incorporate through petition and referendum of area electors. Cities meanwhile continued to be created by private legislative act. In 1892, the Constitution was again amended, this time to allow cities to be incorporated by petition and referendum. The theory underlying this delegation

¹ WIS. CONST. art. XI, sec. 3 (1848), then provided: "The legislature shall provide for the organization of cities and incorporated villages."

was that persons residing in the territory affected by a proposed incorporation should determine for themselves their form of government.²

Incorporation statutes were enacted as early as 1849. Since that time these statutes have been added to, subtracted from, amended, and renumbered numerous times. To launch into a lineal history of these statutes would be unproductive because the early statutes dealt only with non-discretionary incorporation requirements such as procedure, minimum area and minimum population. The issue of community character was not addressed by the legislature until the most recent 1959 revisions. Instead, the courts tackled the community character requirement in these early years.

The following paragraphs describe in some detail the lineage of Wisconsin incorporation caselaw. Time spent in understanding these cases is worthwhile because Petitioner's briefs cite many of them as binding precedent. Also, an understanding of past cases helps put into perspective the 1959 revisions.

The grandfather of all incorporation cases in Wisconsin is Lammers³. The Supreme Court in Lammers was asked to invalidate an incorporation on the basis of unconstitutionality. All of the statutory requirements as to minimum area and population density had been met, however, the opponents argued that the 1898 statute authorizing village incorporation contained no size or density limitation. Theoretically, they argued, a village could be gigantic and quite contrary to a village-in fact. Opponents argued that lack of specificity was contrary to section 23, article IV of the Wisconsin Constitution which provides that the legislature *shall establish but one system of town and county government, which shall be as nearly uniform as possible*. Opponents to the incorporation argued that this language prohibited the legislature from enacting a law whereby, without any distinction based on population density or some other characteristic, an area may come under town government or village government at will. It was a provocative argument because the constitution was (and is) silent as to specific incorporation standards. Opponent's argument was also provocative because many Wisconsin municipalities had been incorporated under the current statutes. If these statutes were found to be unconstitutional then many cities and villages throughout the state could be found illegitimate and unlawful.

In a sweeping and elegant opinion, the Supreme Court in Lammers found the incorporation statutes valid. The Court conceded that if the statutes permitted rural territory that possessed none of the attributes of a village to nonetheless change from town to village government at will, then those statutes would be invalid. However, the statutes would be upheld if they could be interpreted in a manner consistent with the Constitution. The Court proceeded to reconcile the statutes using the following now-famous reasoning:

1. Article XI, sec. 3, requires the legislature to provide for the "organization of cities and incorporated villages."
2. Article IV, sec. 23 of the Constitution required the legislature "to establish but one system of town and county government which shall be as nearly uniform as possible."
3. The framers of the Constitution must have impliedly defined cities and villages as those respective communities were understood in 1848.

² Report of the Interim Urban Problems Committee, pg. 10, 1959.

³ State ex rel. Holland v. Lammers, 113 Wis. 398 (1902).

4. The two constitutional sections read together indicated a constitutional intention that
 - (a) A village or city must exist in fact prior to its incorporation, and
 - (b) There must be some factual basis for determining which areas in a township can incorporate and which cannot, otherwise the system of towns and counties would be subject to change by the whim of whosoever sought incorporation.
5. The legislature is presumed to have incorporated the constitutional definition of a village and city in fact into its statute and the act, as thus limited, is constitutional.

Thus, in the absence of specific statutory language defining the notions of town, village, and city, the Supreme Court interpreted the Constitution by transporting themselves to the year 1848 and inserting themselves into the framers' shoes. The following passage on page 413 of the opinion reveals what they found:

It is a fact of common knowledge that very many of the members of our constitutional convention were from New England and New York. In those states the town was the political unit of territory into which the county was subdivided, and a mere inspection of the constitution demonstrates that where the word "town" is used therein it was used with reference to this idea. The word "city" undoubtedly refers to a municipal corporation of the larger class, somewhat densely populated, governed by its mayor and board of aldermen, with other officers having special functions. A "village" means an assemblage of houses less than a city, but nevertheless urban or semi-urban in its character, and having a density of population greater than can usually be found in rural districts. A very common definition of a village found in the books is as follows:
"Any small assemblage of houses, for dwelling or business, or both, in the country, whether situated upon regularly laid out streets and alleys or not."

The Supreme Court's reasoning in Lammers became known as the *Lammers Doctrine*. Over the next five decades the Lammers Doctrine would prove critical to incorporation law. The Doctrine established jurisdiction (in the absence specific statutory language) for the judicial branch to substantively review incorporation petitions on a case by case basis. The Doctrine was also important because it defined for the first time what is meant by the term 'village'. Nine subsequent decisions upheld Lammers⁴ and as a result, the Doctrine became firmly imbedded in Wisconsin law.

One of the cases upholding Lammers was Chenequa⁵. This case bears mention because it significantly liberalized the Lammers Doctrine. The proposed

⁴ Fenton v. Ryan, 140 Wis.353 (1909), Incorporation of Village of Biron, 146 Wis. 444 (1911), In Re Village of Chenequa, 197 Wis. 163 (1928), In Re Incorporation of Village of St. Francis, 209 Wis. 645 (1932), In Re Town of Hallie, 253 Wis. 35 (1947), In Re Town of Preble, 261 Wis. 459 (1952), In Re Village of Oconomowoc Lake, 264 wis. 540 (1953), 270 Wis. 530 (1955), In Re Village of Elm Grove, 267 Wis. 157 (1954), In Re Village of Brown Deer, 267 Wis. 481 (1954).

⁵ In Re Village of Chenequa, 197 Wis. 163 (1928).

Village of Chenequa consisted of woodland surrounding Pine Lake. Most of the 200 residents were wealthy persons who commuted to work in Milwaukee some 30 miles away. The proposed village lacked stores and churches. Opponents argued that it was not the sort of village the framers of Wisconsin's Constitution had in mind in 1848. The court disagreed. As in Lammers, the justices transported themselves mentally back to the year 1848 and again inserted themselves into the shoes of the framers. This time it found that the framers were "optimistic" men who foresaw a future of transportation and automotive wonders that would revolutionize daily life. They foresaw that such wonders would make possible rural suburban communities such as Chenequa, whose sole purpose was comfortable residential living. The Court found that a traditional village center was no longer necessary in modern life. Not surprisingly, Petitioner's brief cites heavily from language in Chenequa.

Only four years later, in 1932, the Supreme Court decided St. Francis.⁶ This case is worth mentioning because it interpreted what is meant by *village* very narrowly. While not overruling Chenequa, it nonetheless favored an analytical approach much more in line with the original Lammers Doctrine. The proposed village of St. Francis lay directly south of Milwaukee. While still rural in nature, development was planned for and expected. In fact, street-car service from Milwaukee already ran through the area and many residential subdivisions had been platted. However, the court found the area to be too rural at present to meet the Constitutional notion of a village. The Court also found the proposed area to be crisscrossed many times over by railroad lines. These lines bisected the proposed village into separate areas, both physically and socially, and was indicative of an overall lack of community interest.

Chenequa and St. Francis are examples of the variability of result when Wisconsin courts applied the Lammers Doctrine. For the next twenty years courts would see-saw back and forth like this between broad and narrow interpretations. Each local court applied the Lammers Doctrine differently, as did the Supreme Court whose membership changed throughout the years. It was not an ideal approach to incorporations but it was the Wisconsin way for many many years.

After World War II development pressure in metropolitan areas exploded and issues of incorporation, annexation and consolidation became infinitely more complex. Improvements to road infrastructure allowed residents from rural areas to commute into central cities, commutes that would have been inconceivable earlier. Changes in federal housing policy and a lifestyle preference for suburban living also contributed. The result was an unprecedented development rush towards peripheral lands surrounding central cities.

As people flooded into these rural fringe areas they demanded police and fire protection, schools, sewer and water, roads and other services. Oftentimes, the local governments were unable to respond to these needs. As a result, these areas either petitioned for incorporation or sought to be annexed to larger municipalities that could provide services.⁷

Both incorporation and annexation efforts generated considerable animosity and litigation. Town governments opposed annexation attempts and alternatively, existing municipalities opposed town efforts to incorporate. Also, rapid

⁶ In Re Incorporation of the Village of St. Francis, 209 Wis. 645 (1932).

⁷ Richard Cutler, Characteristics of Land Required for Incorporation or Expansion of a Municipality, Wisconsin Law Review, pg. 7 (1958).

incorporation of surrounding communities resulted in fragmentation of urban areas. For example, in the Milwaukee area alone 10 new municipalities were created between 1950 and 1957. Creation of these small communities made solution to large urban area problems such as sanitation, transportation, and environment much more difficult. Instead of getting one or two governments to cooperate and take action, now more than a dozen had to be so moved. Observers to this situation felt that the fact that these municipalities could form so easily was problematic. Essentially, all that was needed was a slight majority of the electors in a referendum.⁸

During this time of rapid development, the Lammers Doctrine became even more unwieldy in practice. Attorneys and municipal planners interpreted Lammers as allowing for incorporation only those areas that featured compact community centers. This was contrary to planners' wishes. Planners wanted control of substantial lands outside the center so as to avoid prolonged annexation battles. Complying with the Lammers Doctrine seemed to require areas to first incorporate their compact centers and then annex adjacent lands thereafter. Thus, creation of satisfactory municipal boundaries took two or three steps as opposed to one. The creation of so many small municipalities surrounding Milwaukee has been blamed on Lammers.

Dissatisfaction with Lammers led to enactment of the "Oak Creek" Law in 1955. This special legislation permitted a town to incorporate as a 4th class city if the resident population was 5,000 persons, if the town was adjacent to a 1st class city, and if the territory contained an equalized valuation of \$20 million. Following the new law, Oak Creek incorporated an area of 29 square miles. Franklin and Mequon followed, incorporating areas of 34 and 47 square miles respectively. The advantage of incorporating such large land areas in one single step, rather than in piecemeal fashion through annexation, was to avoid costly litigation surrounding each annexation attempt.

However, the Oak Creek Law did not improve the overall practice of incorporation. Many felt that the cities created by the law were too large and many doubted their legality under existing Lammers caselaw. Clearly, something had to be done.

In 1957, the legislature created the *Urban Problems Committee* to examine the problems confronting municipalities throughout the state resulting from urban expansion. Its research was not confined to incorporation alone. Other issues examined were the state's role in local planning, roles of county and town government, revision of cooperative agreement statutes, revision of regional planning statutes, and examination of annexation and consolidation practices.⁹

Regarding incorporation, the committee felt that the statutes needed revamping "to provide a more systematic and stable legal framework." They cited the following reasons:

- 1) current law has resulted in lengthy and expensive court battles over municipal boundaries and this has hampered the development of land use planning and initiation of services into the disputed area;
- 2) *there is no precise statutory definition of the type of land which reasonably could be considered municipal in character and thus logically eligible for incorporation. Without such guide-posts, some areas have*

⁸ Report of the Interim Urban Problems Committee, pg. 9, 1959.

⁹ Report of the Interim Urban Problems Committee, pg. iii., 1959.

been incorporated which lack the characteristics normally associated with village or city government (emphasis added);

3) current law varies the requirements for incorporation as a village or city, making it easier to incorporate as a city than as a village. In addition to causing confusion, these differences have resulted in a proliferation of newly created cities that may be more appropriate as villages. Many of these areas went directly from town to city status to avoid the more stringent village requirements, and

4) current law provides no legal means for contiguous municipalities an opportunity to protest the incorporation proceeding (in fact, the Supreme Court in *Schatzman v. Greenfield*, 273 Wis.277 (1956) held that neighboring jurisdictions had no standing in court to contest incorporations);¹⁰

In addition to these concerns, the Committee was also aware that some recent incorporations had been too small and that other had been too large. Some had been undertaken solely to block the expansion of neighboring municipalities. The Committee was aware of the recent problems in the Milwaukee area, saying the following:

There is no unincorporated territory remaining in Milwaukee County, so any changes in existing law could offer no solution to the problems of fragmented government in that area. However, the difficulties experienced in Milwaukee County as a result of this rash of incorporations since the war will be of increasing concern to other areas in the state which now are beginning to feel the full impact of urbanization. Some adequate legal means should be made available to foster sound metropolitan growth and development.¹¹

The Committee was well aware of the difficulties posed by multiplicity of governments and fragmentation of regulatory authority. In 1957, the same year the committee was formed, federal census data showed that Wisconsin ranked 5th among states in the highest number of local government units with 5,730. It ranked 1st in the nation in average number of local government units per county with 81. The Committee had this to say about the problem:

Balkanization of political power often is regarded as the greatest single problem facing urban areas. It is difficult to develop unity of purpose or to coordinate planning and action over the whole urban complex when a multiplicity of units are each exercising varying powers over portions of the urban area.¹²

Further, on page 9 of the report, the Committee writes, "[p]erhaps the most serious shortcoming in the present law is the lack of consideration given to the impact of separate incorporations on the entire metropolitan area within which they occur."

¹⁰ Report of the Interim Urban Problems Committee, pg. 9, 1959.

¹¹ Report of the Interim Urban Problems Committee, pg. 10, 1959.

¹² Report of the Interim Urban Problems Committee, pg. 3, 1959.

In their brief, Petitioners cite the above passage regarding *Balkanization*. Petitioners claim, using this passage, that the situation in Powers Lake is analogous to that contemplated by the drafters in 1959. On page 6 of their brief, they write that Powers Lake is "balkaniz[ed]" by five different governmental units so as to pre-empt coordinated governmental solutions to the urban area. Because Powers Lake's dilemma meets the drafter's intention, they argue that the Department must grant incorporation. However, a reading of the entire legislative history shows that the dilemma facing Powers Lake is not the same problem contemplated by the drafters.

The drafters contemplated experiences faced by Milwaukee area communities. There the problem was ill-conceived incorporations that added more municipalities to the area. In contrast, the 5 governmental units exercising jurisdiction over the Powers Lake area have been in existence a very long time. Any balkanizing in Powers Lake is not the result of newly created municipalities. Ironically, the only community being proposed is Powers Lake itself, the addition of which would add yet another government to the 5 jurisdictions existing in the immediate area and the nearby Villages of Twin Lakes and Genoa and the City of Lake Geneva. Powers Lake's problems are not the result of more government units being added, rather they are the result of urbanization of existing town lands and the inability of town and county government to provide urban-type services. Petitioner's brief does an excellent job of presenting the range of problems faced by a resort area like Powers Lake split into five separate jurisdictions. The Department appreciates these difficulties. However, it should not be supposed that this situation is perfectly analogous to that contemplated by the drafters in 1959.

The Urban Problems Committee met 10 times between 1958 and 1959 to discuss and ultimately agree upon bills to present to the legislature that would create new incorporation statutes, amend existing regional planning statutes, and amend existing statutes pertaining to cooperative agreements. Regarding the incorporation statutes, the Committee recommended Bill Number 226 A, to the legislature. This Bill became law in 1959 and fundamentally changed the practice of municipal incorporation in Wisconsin. Overall, the process was tightened up and incorporation was made more difficult, particularly in metropolitan areas.

The new statutes brought a number of changes. For the first time, the state was given a role in incorporations. Adjacent communities were given the ability to participate in incorporation proceedings, in which they obviously have a stake. Also, a new classification system was created whereby cities and villages were classified based on their proximity to metropolitan areas. Villages and cities are either *metropolitan* or *isolated*. Incorporation of metropolitan municipalities was made more difficult in order to prevent the balkanization of urban areas that the framers saw occur in the Milwaukee area. Incorporation of *isolated* municipalities was made less difficult but still subject to the enumerated requirements.

However, the most significant change wrought by the 1959 revisions was the specification for the first time of community character standards. The Committee was fully aware of the significance of these standards, as can be seen on page 15 of the Committee's report where it writes:

The fundamental change made by the committee in existing law is contained in s. 66.016 which sets forth the standards to be applied... in reviewing proposed incorporations. All

incorporations must be "reasonably homogeneous and compact" and must evidence a pattern of significant land development.

Formerly the community character requirement was embedded in the Lammers Doctrine. However, new statute section 66.016 now set forth the relevant standards. Petitioner's brief cites heavily from pre-1959 cases such as Chenequa and Oconomowoc Lake and asks that the Department consider these cases as precedent. While these cases still retain value as background, as precedent they must fail. The Lammers Doctrine was based on the fact that the legislature had not spoken on community character. In fact, that was the justification for the court's now famous constitutional interpretation. The upshot of the 1959 revisions is that the legislature has finally spoken. As a result, the Lammers Doctrine has given way to the statutes and is no longer binding law; Wisconsin statute section 66.016 is.

It is significant to note that the language in §66.016(1)(a) was not subject to controversy during the ten legislative committee meetings. At none of these meetings was the language discussed at any length and at no point was alternative language ever suggested. Thus, it must be inferred that the drafters believed the language to be clear, straight-forward, and mandatory. In fact, on page 15 of Bill Number 226 A, the Committee's notes following proposed section 66.016 indicate that the requirements in §66.016(1) must be met, while those in §66.016(2) must be considered by the Department, but failure to meet all of them is not fatal. This note underscores the importance the committee placed on the community character requirement. The drafters intended that before any incorporation could occur, the community character requirement, as set forth in 66.016(1)(a), MUST be met.

Petitioners would have the Department read the statute differently. On page 5 of their brief, Petitioners seem to ask the Department to apply a flexible balancing test, based largely on two factors: 1) the ability of the proposed village to assume the responsibilities and obligations of municipal government, and 2) the degree to which governmental problems affecting the entire urban complex would be made more or less difficult because of incorporation. Petitioners claim would pass such a test. On page 19 of their brief they claim that if incorporated Powers Lake would stand amongst the top 13% of cities and villages statewide in assessed value and the top 25% in population. They satisfy the second prong because a single government would make solution of government problems that beset the existing 3 towns and 2 counties easier. Under Petitioner's proposed balancing test, it would be possible for Powers Lake to fail 66.016(1)(a) and still become incorporated, because consideration of all the circumstances might reveal that, on balance, incorporation should be granted. However, Petitioner cites no authority for this new standard of review. Also, it is significant to note that the Department already considers the two factors that constitute Petitioner's new standard. In §66.016(2) the Department considers the ability of the proposed village to assume municipal government, and also the affect of incorporation of the remainder of the town(s). Because these factors are already considered, it would be a ridiculous reading of the law to have the Department consider them a second time, in place of the criteria set forth in §66.016(1)(a).

In the event that the Department rejects their new standard of review, Petitioners seem to offer a second alternative. On page 17 of their brief they offer a standard based on reasonableness. They cite the word *reasonable* as it appears in §66.016(1)(a) and interpret it to mean that the Department ought to look to the type of community involved and then determine whether or not homogeneity and compactness are rationally related to the nature of this

community. As support for this notion Petitioner cited Oconomowoc Lake¹³ for the following:

a community devoted exclusively to residential development and "possessing that spirit of togetherness" or that core of community spirit characterized by unity of action and purpose is a "village in fact", even though it is only concerned with those services necessary for residential community development, such as fire and police protection, zoning and sanitation, and it need not even have within its boundaries a village store or school (emphasis added by Petitioners).¹⁴

Petitioner's use of Oconomowoc Lake is surprising given that that case dealt with pre-1959 statutes (though the decision came in 1959, the facts and statutes applied were pre-1959). This case can not possibly be used to interpret and illuminate a statute then not yet in existence.

Throughout their brief, Petitioners refer to Powers Lake as a typical lake community. They write that it is typical in commercial development and social customs to other lake communities throughout the state. From these references, Petitioners seem to ask the Department to apply a standard review specific to lake communities. However, although there are numerous lake-oriented communities similar to Powers Lake, the statutes do not presently allow for this. They do not distinguish between lake communities and non-lake communities. The statutes only distinguish between cities and villages and between metropolitan and isolated cities and villages.

Petitioners seem eager that this Department apply any other standard of review than that prescribed by the statutes. Clearly petitioner's proposed standards of review run contrary to the legislative history and the plain meaning of the statutes. It also runs contrary to the post-1959 caselaw that interprets §66.016(1)(a). Pleasant Prairie¹⁵ is the most frequently cited case regarding the requirement of compactness and homogeneity. Petitioners and Intervenors read Pleasant Prairie very differently. Petitioners point to the court's use of the term *flexible* throughout the opinion as support for their proposed standards of review. In fact, Pleasant Prairie does allow for flexibility, however it is the flexibility to consider factors in addition to those specifically enumerated in the statute. The court found that "...homogeneity has a meaning apart and in addition to the factors listed [in §66.016(1)(a)]..."¹⁶ Other characteristics considered might include land-use patterns, population density, employment patterns, recreation, and health care customs. However, Pleasant Prairie also found the statute to mandate satisfaction of the homogeneity and compactness requirement and the presence of a community center.¹⁷ Therefore, the flexibility cited by Petitioners refers to consideration of additional non-enumerated factors, rather than flexibility in

¹³ In re Village of Oconomowoc Lake, 7 Wis.2d 400 (1959).

¹⁴ Petitioner's brief in support of incorporation of Powers Lake, pg. 17, 1998.

¹⁵ 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)).

¹⁶ Pleasant Prairie, 113 Wis. 2nd 327, 337.

¹⁷ "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) and the public interest considerations of sec. 66.016(2) become irrelevant" Pleasant Prairie, 113 Wis.2d 327, 341.

elimination, removal or reduction of the enumerated requirements in the statute.

To summarize, the Department has reviewed the legislative history and finds no basis for either of Petitioner's proposed tests. The Department must review this petition for incorporation in a manner consistent with the plain meaning of the statute. As indicated earlier, based upon stipulation of the parties, only the requirements in §66.016(1)(a) will be analyzed. The following sections examine in detail the facts of this petition as they pertain to §66.016(1)(a).

II. Review of 66.016(1)(a)

A. Boundaries

The area proposed for incorporation is concentrated around three lakes. Trending southwest the three lakes are Powers Lake (the largest lake), Benedict Lake lies in the middle and Tombeau Lake (the smallest lake). This community lies on the border of Kenosha and Walworth Counties and is surrounded to the southeast by the village of Twin Lakes and the village of Genoa City to the southwest. The city of Lake Geneva is approximately 4 miles to the Northwest. Map 1, on page 14, illustrates the region surrounding the proposed village.

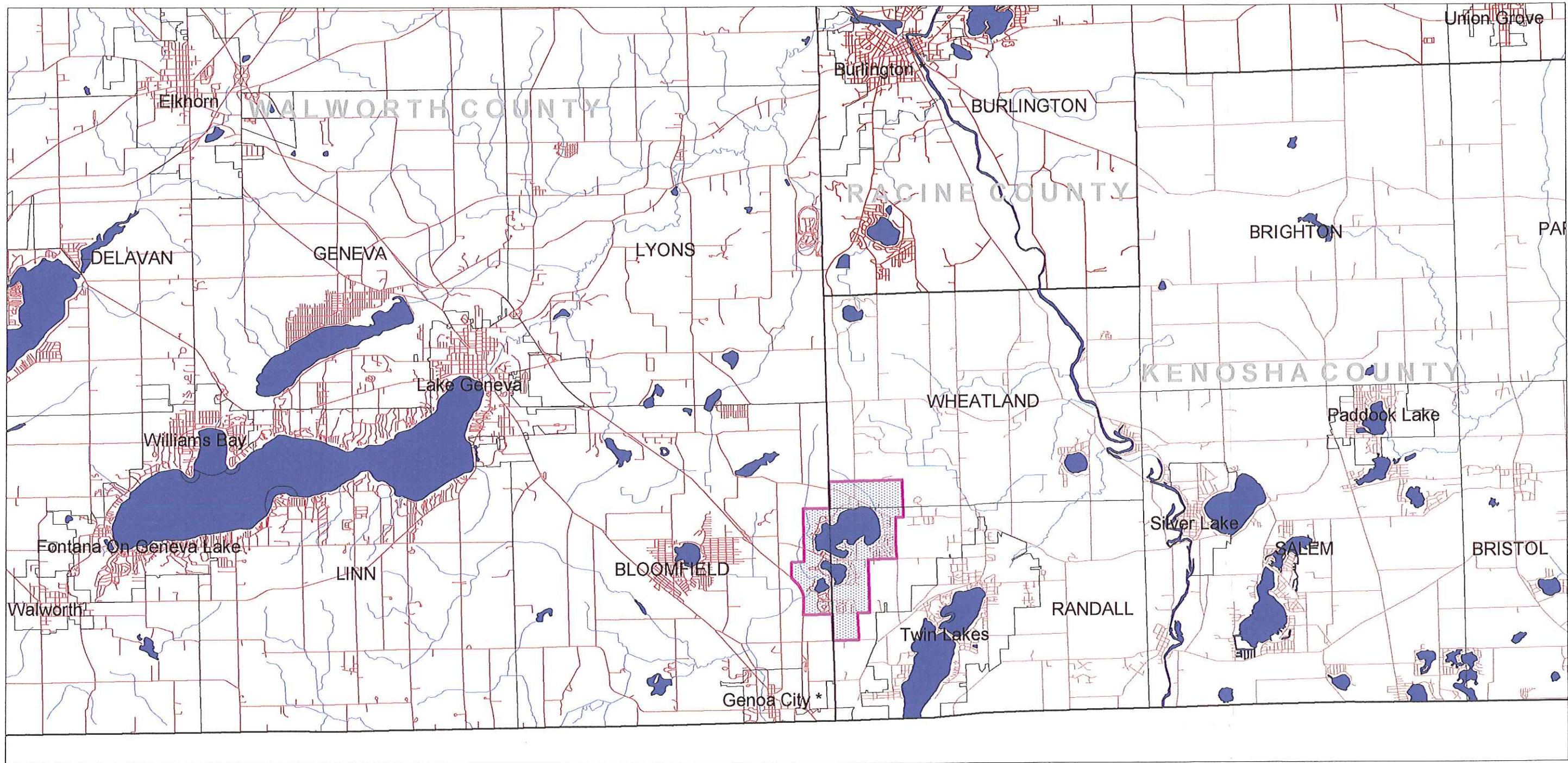
The territory petitioned for incorporation is bounded on the west by a primary environmental corridor lying in portions of sections 12, 13, 24 and 25 of the Town of Bloomfield, Walworth County. A part of the northern border of the petition area bisects the Powers Lake Tamarack natural area (which is also designated a primary environmental corridor by SEWRPC). This area includes most of the territory that drains into Powers Lake. In addition, portions of three isolated natural areas are also included within the proposed village. One of these is located at the northwestern corner and the other two are in the southeast corner. Environmental corridors and isolated natural areas comprise a total of 1,346 acres, or about 50% of the total 2,667-acre area of the proposed Village.


Development in the Proposed village is clustered around a chain of three lakes. Trending southwest, Powers Lake is the largest of the three lakes at 459 acres. Below this is Benedict Lake at 78.02 acres and below this Tombeau Lake at 34.9 acres.

The Department determined in 1991 that the external boundaries do reasonably contain the principal developed areas along with their lakes and associated wetlands without including excessive amounts of rural, agricultural land.

In 1991 the Department questioned including the northeast one-quarter of Section 25, Town of Bloomfield and the northwest one-quarter of Section 30, Town of Randall. Section 25 contained, and still does contain, farmland which would have given the proposed village excessive agricultural land. Section 30 contains Vincent Airport. The boundaries for the current incorporation petition area are similar to that of the 1992 petition except for section 25. The exclusion of section 25 promotes greater compactness in shape without sacrificing buildable undeveloped lands within the village. The northwest one-quarter of Public Land Survey (PLS) section 30, containing Vincent airport, remains within the proposed boundaries. Map 2, on page 15 shows the boundaries of the proposed village area.


Proposed Village of Powers Lake in Kenosha and Walworth Counties



 Powers Lake

1:125,000

0.4 0 0.4 0.8 1.2 1.6 2 Miles



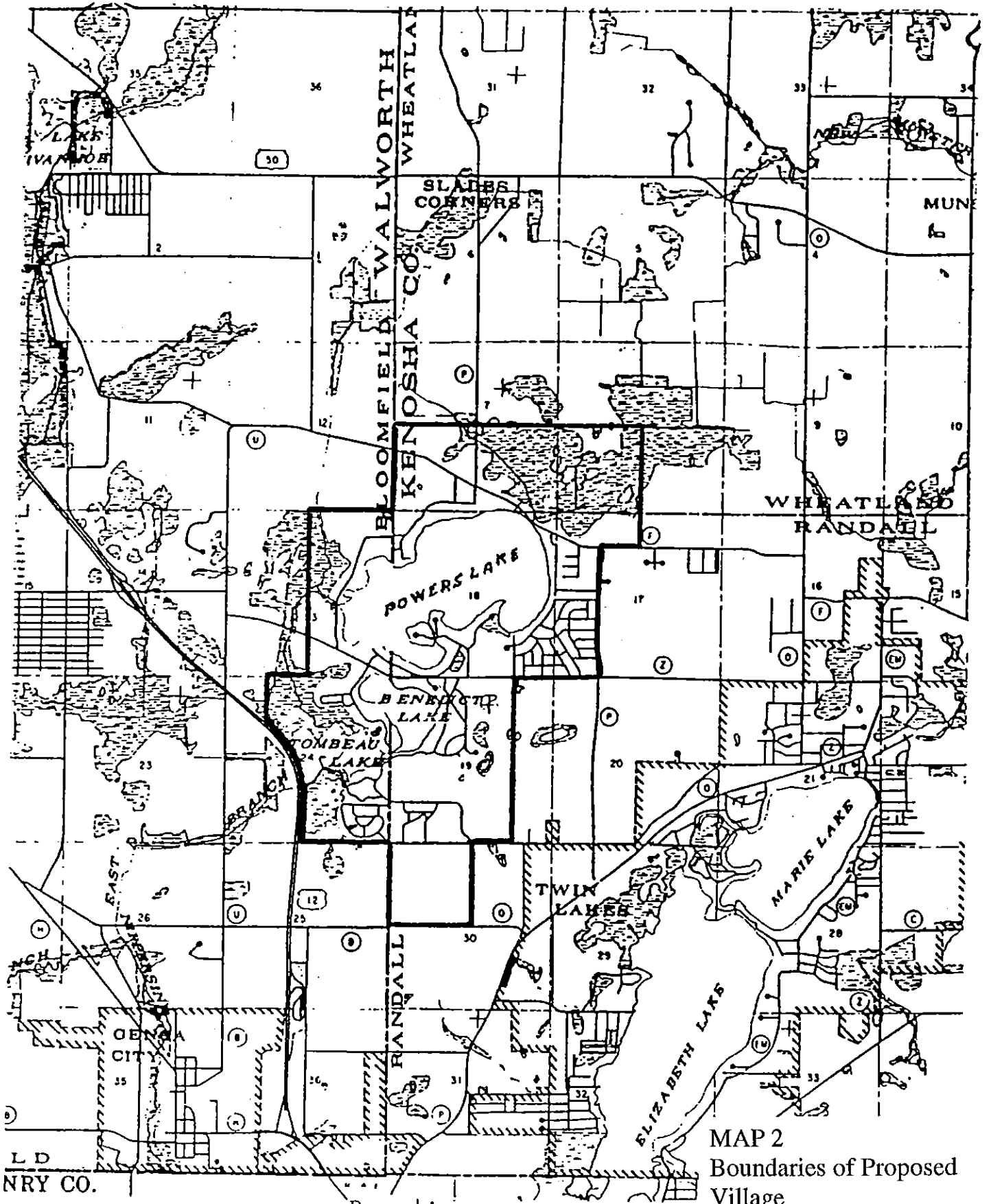
Created by Linda Horvath, Municipal Boundary Review, WisDOA, July 1999

MAP 1
Map of Surrounding Area
OLIS-DOA

MAP "A"

Proposed Village of

Powers Lake



MAP 2

Boundaries of Proposed Village

Meehan Rept. - Exhibit 1

LD
NRY CO.

B. Endangered/Threatened Species

The Wisconsin Department of Natural Resources, Bureau of Endangered Resources (DNR) provided an updated review of the 1992 Powers Lake boundary assessment. The review conducted contained information for the project area in T1N R18E S12, 13, 23-27 and T1N R19E S7-8, 17-20, 29-30, of Kenosha and Walworth counties. This list updates the 1992 list of species observed within the area proposed for incorporation and notes observations of species in additional locations. Listed as species of Special Concern are:

1. *Fundulus diaphanus* (banded killifish) - Observed in Benedict, Powers and Elizabeth lakes.
2. *Erimyzon sucetta* (lake chubsucker) - Observed in Benedict, Tombeau and Elizabeth lakes.
3. *Etheostoma microperca* (least darter) - Observed in Benedict lake.

The *Powers Lake Tamarack natural area* in T1N R19E S8, was identified as an endangered resource in a letter to the Department from the DNR in February, 1992. A 1976 survey report stated that this privately-owned 200-acre natural area consists of northern wet forest, shrub-carr and southern sedge meadow. Also listed as an endangered species is *Eleocharis quadrangulata* (square stemmed spikerush), which was observed in T1N R19E S18 and T1N R18E S13.

Opsopoeodus (notropis) emiliae (pugnose minnow), a State Special Concern fish was also observed in Bassett Creek, which is included in the regional watershed. Also observed in Benedict Lake and listed as a Threatened Species in Wisconsin was *Notropis anogenus* (pugnose shiner).

C. Natural Drainage Basin

The Towns of Bloomfield, Randall and Wheatland lie entirely within the upper Fox River watershed. The subwatershed boundaries, found on Map 3, on page 17, "Subwatershed Boundaries, Powers Lake Area", in the Environmental Assessment, further divide surface water drainage into several subwatersheds: East Branch of Nippersink Creek, New Munster Creek, and Twin Lakes. Almost all of the developed area of the proposed village drains either into Powers, Benedict, or Tombeau Lakes, and subsequently into the East Branch of Nippersink Creek.

The total direct drainage area into Powers Lake encompasses about 2,177 acres. 1,361 acres are located within the proposed village, representing about 63% of the total direct drainage area. The subwatershed and subbasin boundaries further contribute to the natural boundary delineation of the proposed village.¹⁸ As a result, the proposed boundaries for Powers Lake do adequately correspond to the natural drainage systems.

¹⁸ Patrick Meehan, An Evaluation of the Proposed Incorporation of the Powers Lake Community into a "Village" Under Wisconsin Statutes Section 66.016. (May, 1998), pg. 4.

*Lower Fox River/Illinois
Watershed*

*White River and Nippersink Creek
Watershed*

Kenosha County
Walworth County

Powers Lake

Powers Lake

*Lake
Benedict*

*Tombeau
Lake*

Lake Marie

Elizabeth Lake

*Pell
Lake*

12

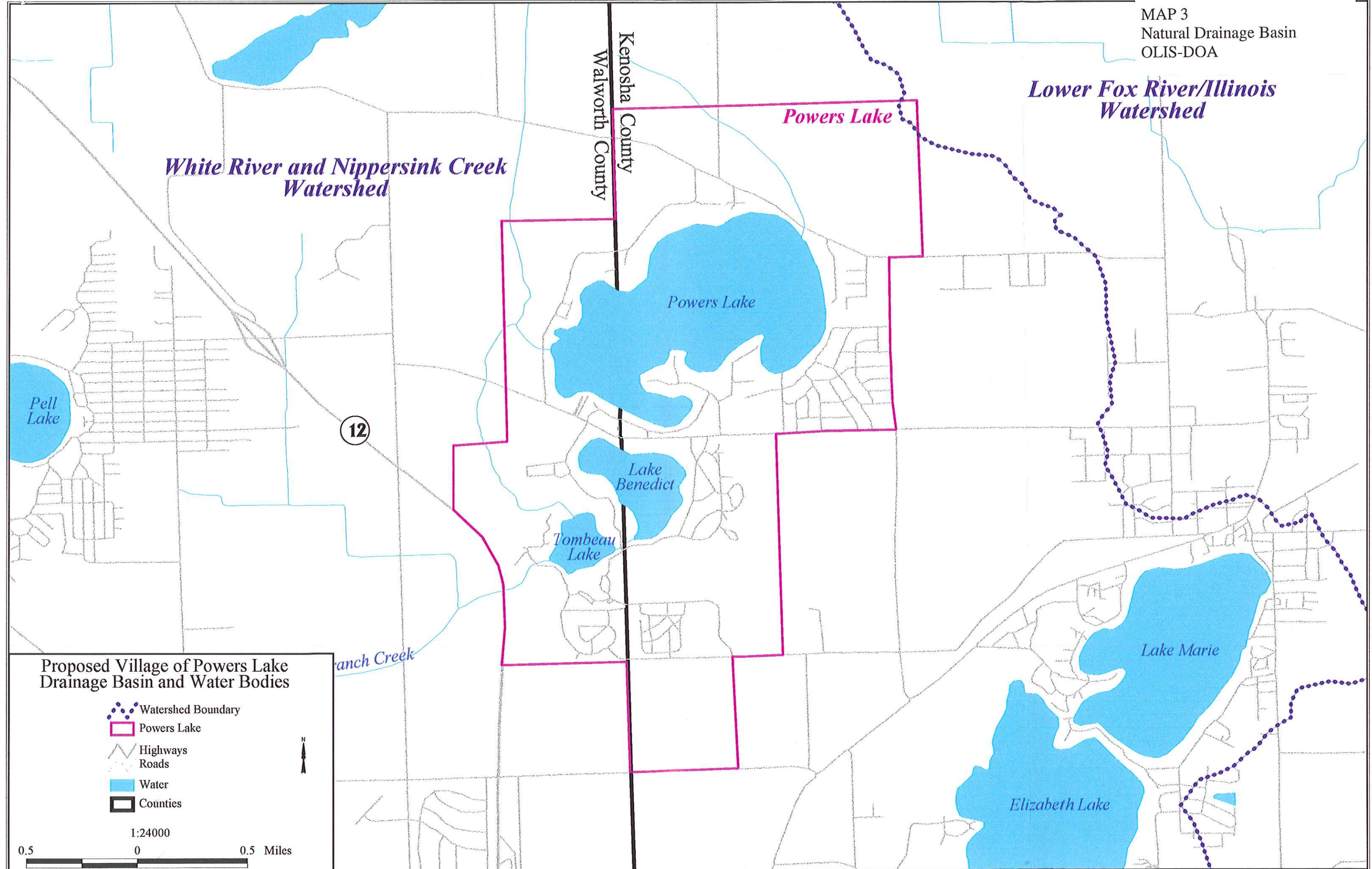
Branch Creek

Proposed Village of Powers Lake
Drainage Basin and Water Bodies

- Watershed Boundary
- Powers Lake
- Highways
- Roads
- Water
- Counties

1:24000

0.5 0 0.5 Miles



D. Soil Conditions

As discussed in the 1991 determination, the surface features of the proposed Village are the result of ground moraine deposits from the Lake Michigan lobe of the final, or Wisconsin, stage of glaciation. This glaciation produced shallow lakes, wetlands, isolated ponds, and the large, level "flats" and gently rolling ground moraine, where glacial runoff has deposited sand, gravel and soil. Isolated areas of wind blown loess and surface soils of low permeability cover the moderately to well-drained soils associated with glacial drift. In some locations, trapped water on the flats has led to the formation of small ponds or wetlands. Small drumlins and other surficial evidences of glaciation bordering Powers and Benedict Lakes contain much of the residential development in the area because they are elevated above the water table. Because of the physical action of successive ice sheets, the bedrock geology has had little or no direct influence on surface features or soils.

Map 4, on page 19, portrays the various soils associated with the shallow lakes, outwash terraces, and generally rolling topography which is characteristic of this area. The pattern of lakes and low ridges generally trend and drain from the northeast to the southwest. Predominate soil types within the area to be incorporated are the Fox-Casco, Warsaw-Plano, and Houghton-Palms associations. The first two soil associations are typically well-drained loam/silty clay loam subsoils, overlying sand and gravel formed by glacial stream terraces. The Houghton-Palms (Ht) association consists of poorly drained organic soils overlying shallow basins and depressions. For the purpose of urban uses, these soils can be characterized by their suitability for residential and commercial development, on-site sewage disposal systems, and transportation improvements

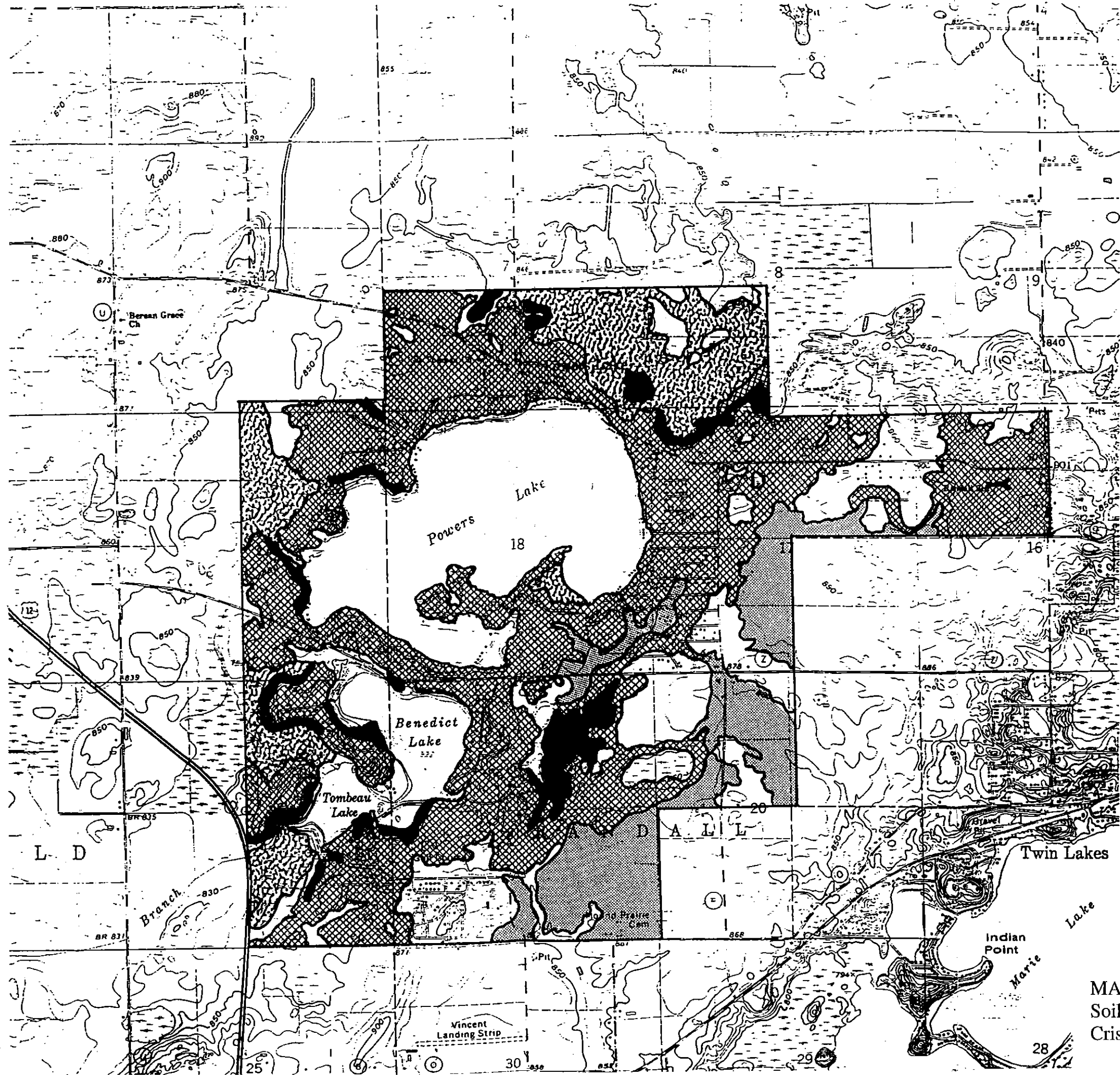
The Houghton-Palms (Ht) soil type is associated with wetlands and adjoining lowlands at the inlet to the Northeast of Powers Lake and along the West and Southwest boundaries of the proposed territory, along the outlets to Benedict and Tombeau Lakes.

A low ridge trends Northeast-Southwest and, for the most part, petitioner's eastern and southeastern boundary has stopped short of the ridge line used to define the approximate area separating the Twin Lakes Urban Service Area from the proposed Powers Lake Sanitary District. Since, as in 1991, there is no public sewage treatment facility in the proposed village area, the use of on-site private systems is the sewage disposal norm for the Village area. As discussed in a later section, sanitary sewers are needed to meet SEWRPC recommendations to protect water quality.





Soils suitable for development lie to the East and Southeast of Powers Lake. With respect to residential development utilizing conventional onsite sewage disposal systems, about 62% of the drainage area is covered by soils suitable for such development and about 28% is unsuitable for such development. Utilizing sanitary sewer service about 66% of the drainage area tributary to Powers Lake would be suitable for residential development, while 33% of the drainage area would remain unsuitable for development. Suitability for 1% of the land could not be determined.¹⁹ Map 5, on page 20 shows Groundwater

¹⁹ SEWRPC. A Management Plan for Powers Lake Kenosha and Walworth Counties, Planning Report # 196, pgs 9-10 (1991).

Contamination Susceptibility for the soil types present in the area.



LEGEND

-  FOX-CASCO ASSOCIATION
-  CASCO-RODMAN ASSOCIATION
-  HOUGHTON-PALMS ASSOCIATION
-  WARSAW-PLANO ASSOCIATION

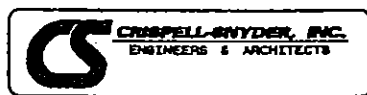
SOURCE:
 SOIL SURVEY FOR KENOSHA AND
 RACINE COUNTIES
 SOIL SURVEY FOR WALWORTH COUNTY

SOILS MAP

MAP 4
 Soils Map
 Crispell-Snyder, Inc.







SCALE: 1" = 2000'



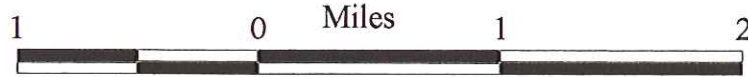
Proposed Village of Powers Lake Groundwater Contamination Susceptibility

-  Powers Lake
-  Minor Civil Divisions
-  Water
-  Counties

- Contamination Susceptibility
-  Most susceptible
 -  Median susceptibility
 -  Least susceptible
 -  Least susceptible



1:50000

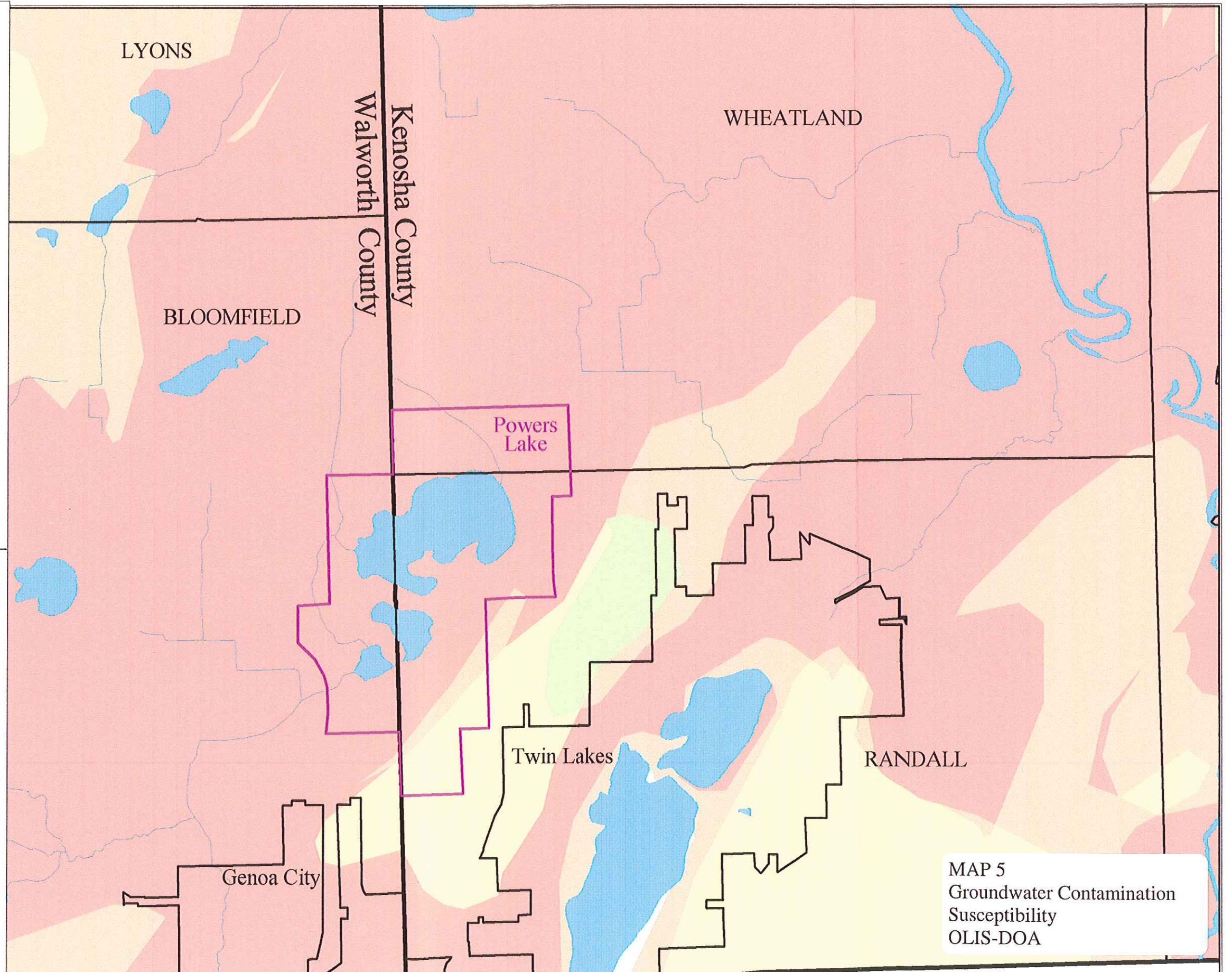


"Groundwater contamination susceptibility is defined ... as the ease with which water (and any contaminant carried in the water) travels from the land surface to the top of the groundwater layer."

Wisconsin Department of Natural Resources

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

Fitness for Use:
This model is derived from generalized information at small scales and should not be used for any site-specific purposes.



MAP 5
Groundwater Contamination
Susceptibility
OLIS-DOA

E. Area Lakes

The proposed village area includes three lakes: Powers, Benedict, and Tombeau. Map 3, on page 17 shows the size and location of these lakes.

In its 1991 Determination, this Department noted that the inclusion of all three lakes in the village area was important in effectively addressing lake quality issues; "As any management activities undertaken on behalf of Powers Lake will ineluctably affect Lakes Tombeau and Benedict, alteration of the existing lake management district boundaries would, therefore, be appropriate."²⁰ Despite the close proximity of the three lakes and despite the commonality of water quality issues facing the three lakes, a separate lake management district was formed for Benedict and Tombeau lakes in 1995 (This is discussed in further detail in "Political Boundaries"). The formation of two separate lake management districts has added additional complications to any attempt to deal with these problems. In addition, the lack of coordination between the two lake management districts shows a lack of common purpose or identity among the residents of the three lakes.

A 1991 plan for Powers Lake, written by SEWRPC,²¹ outlines a number of specific problems concerning the lake. The plan indicates that although water quality and biological conditions are generally good, pollution loads are too high, there is too much boat traffic, and the area would benefit greatly from improved erosion control ordinances and a sanitary sewer system.²²

Because of their proximity, the three lakes share a common watershed. As a result, environmental integrity of Powers Lake depends directly on Lakes Benedict and Tombeau; what happens on one lake inevitably happens on the others. Therefore, any effort for addressing the problems cited in the 1991 plan should be comprehensive to all three lakes. Protection of the lakes would benefit from incorporation. The boundaries of the proposed village would contain all three lakes and as a result, any land use plan or ordinances developed could address the three lakes together.

Currently, the Town of Randall provides some water patrol services to the three lakes. However, they receive no DNR funding for providing these services and as a result, water patrol is very limited.²³

1) Lake Access

The town of Randall provides water patrol services on the three lakes. In 1998 the DNR opened Lake Tombeau to boating. At the request of the Benedict/Tombeau Lake Management District, the DNR waived a slow-no-wake restriction that had existed on the lake for 12 years. (This could potentially cause shore erosion and other environmental problems in a lake that is only 78.02 Acres.) Richard Anderson, Chairman of the Benedict/Tombeau Lake Management District stated that, although the Town of Randall has assumed responsibility for providing water patrol on Benedict and Tombeau lakes, as well as Powers lake, and that

²⁰ Powers Lake, pg. 15 (1992).

²¹ SEWRPC. A Management Plan for Powers Lake - Kenosha and Walworth Counties Wisconsin, November, (1991).

²² Ibid. pgs. 161-163.

²³ Personal communication with Richard Anderson, Chairman of the Benedict/Tombeau Lake Management District. July, 1999.

they receive DNR funding to provide these services, that water patrol on Benedict lake is limited to 2-3 hours on weekends only and that it is almost non-existent on Tombeau lake. Access to the lakes by residents and visitors has been improved by the reversion of two formerly private parks operated by the Lake Knolls Civic Association, including a beach and several swimming and boating piers, to public facilities managed by the town of Randall. The town of Randall has improved the boat launch in Bayview park. In addition, the DNR has also dedicated a boat launch on Powers Lake for the public near the proposed village center.

F. Transportation

1) Roads

Map 6, on page 23 indicates the location and extent of the street and highway system in the area of the proposed village. The area is served by a network of county trunk highways, none of them classified higher than "major collectors" by the Wisconsin Department of Transportation.²⁴

Within the Kenosha County portion of the proposed village, the area is served by CTH "P" and CTH "F" on the north, CTH "P" and CTH "Z" on the east, CTH "O" on the southern border, and 93rd / Benedict Street through the center (east-west direction) of the area. Ninety Third (93rd) street remains a local arterial street, however, the Regional Transportation System Plan recommends that it be designated as a county trunk highway instead.²⁵

Within the Walworth County portion of the proposed village the area is served by U.S. Highway 12 on the western border, by CTH "B" on the southern border, and by CTH "U" on the western and northern outskirts of the area. In addition, Powers Lake Road/Nippersink Road runs through the center of the proposed village area in an east-west direction and joins with 93rd Street at the Kenosha County line. It should be noted that the proposed incorporation area merely abuts Highway 12. It does not have direct access to it.

SEWRPC is the designated Metropolitan Planning Organization (MPO) for the seven county area including the Powers Lake area. Since the Department's 1992 Determination, SEWRPC has prepared several regional transportation planning documents affecting the Powers Lake area. The most recent is the *Regional Transportation System Plan For Southeastern Wisconsin: 2020*, December, 1997. SEWRPC also prepared a *Transportation Improvement Program for Southeastern Wisconsin: 1998-2000* in November, 1997. The recommendations in these plans call for no major improvements to the "arterial" streets or highways in the Powers Lake area, only maintenance. This intention was corroborated by Brian Bliesner, a Project Engineer with the Wisconsin Department of Transportation, District 2, and by both Kenosha and Walworth County Highway Departments. These sources indicated that there were no road improvements planned for the area other than resurfacing of some county roads and general maintenance. Information provided by Bliesner also indicated that the traffic counts on the areas County Trunk Highways were well under design capacity. Bliesner did state that major

²⁴ Wisconsin Department of Transportation 1995 Rural Functional Classification System (November 1986).

²⁵ SEWRPC. Regional Transportation System Plan for Southeastern Wisconsin: 2020, pp. 186,197 (1997).

improvements were planned for sections of State Trunk Highway 50, where it crosses County Trunk Highway "P", just North of Powers Lake.²⁶

The various county trunk highways described above virtually encircle the proposed village area like a beltline. However, no county trunk highway allows for travel across the proposed village. In fact, the only direct linkage is the Powers Lake Road/Nippersink Road - 93rd Street link and CTH "F"/"P" in the northern part of the village. These links are the only classified "arterials" that are designed to move traffic through the proposed incorporated area.²⁷ The county highways tend to move traffic around the periphery of the area and connect it to other destinations within the region. The local collector and land access streets are not designed to extend from neighborhood to neighborhood. In fact, quite the opposite, they are designed to discourage traffic from traveling through neighborhoods areas. Association between residents residing in different neighborhoods or residential developments is discouraged by this lack of a local road network connecting the various portions of proposed village.

Petitioners' designated community center is located on CTH "P", which runs along the north side of Powers Lake and carries traffic through the area. This commercial center is not readily connected to residential developments in the southern portion of the proposed village. In fact, residential developments in the south are more closely connected to the commercial and cultural opportunities in Twin Lakes and Genoa City.

Nearly all of the local streets in the proposed village serve the scattered subdivided residential areas in the several towns. Although generally paved, they are usually without provision for surface water drainage. In the Department's 1992 determination we noted the problems associated with the many private gravel roads built to service individual subdivisions or parcels. Many of these private roads do not meet requirements for right-of way and other nonconforming construction that continue to prevent their acceptance as town roads. The prospective towns continue to remain ineligible for road aids for the mileage represented by these streets.

The Nippersink subdivisions, located on the Southwest end of the proposed village and divided between two townships, is an example of a subdivision with dysfunctional, nonconforming private gravel roads. The Nippersink residents requested assistance from the towns of Bloomfield and Randall to pave these roads. The town of Bloomfield paved 1870 feet of roadway on Hilltop Drive in 1997 and accepted this section as town roads. The town of Randall is currently considering plans to pave portions of Nippersink's roads lying within its jurisdiction. The project, as currently designed, would rebuild the existing 11 to 16 foot wide gravel roadway with a new 18-22 foot wide paved roadway, shoulder section, ditch construction, drainage improvements, and in some cases, concrete curb and gutter construction. The estimated cost is \$2,000,000. Thus far the Town of Randall has spent in excess of \$100,000 for engineering studies, engineering plans, specifications, and legal fees related to this

²⁶ Personal communication with Gary Sipsma, Director of Highways for Kenosha County, June, 1999

Personal communication with Ben Coopman, Highway Commissioner for Walworth County, June 1999.

²⁷ SEWRPC. Regional Transportation System Plan for Southeastern Wisconsin: 2020, pp. 152,156 (1997).

process.²⁸ It is anticipated that costs will be totally recovered through the assessment of area property owners. Some of the residents have already been assessed. However, the project has become mired in controversy as some residents oppose the improvements. Larry Steen, attorney for the town of Randall wrote the Department that 2 of the subdivisions have hired legal counsel to block the road project and construction has been delayed until March, 2000 in order to give time for the legal resolution of these issues.²⁹

The town of Randall has resurfaced or made improvements to approximately 7.63 miles of roads within the area proposed for incorporation. Table 1, pg. 26 shows a list of road improvement projects completed by the town of Randall since 1996:

²⁸ August 4, 1999 letter to the Department from Kenneth Ward, P.E. Rueckert & Mielke, Inc. and attached *Preliminary Report on the Nippersink Area Roadway Improvement*. (January, 1998)

²⁹ September 9, 1999 letter to the Department from Attorney Larry Steen, Attorney for the Intervenors (Town of Randall)

TABLE 1

| AREA | WHAT WAS DONE | COST |
|--|-----------------------------------|-----------|
| Year 1996: | | |
| Nippersink area | .35 miles pavement resurface | \$17,500 |
| Jefferson Bay area | .4 miles of pavement resurface | \$20,000 |
| Knolls area | 1.18 miles of pavement resurface | \$59,000 |
| Powers Lake Heights | .28 miles of pavement resurface | \$14,000 |
| Aquilla Road | .1 miles of pavement resurface | \$5,000 |
| Parking area next to the fire lane in the Knolls area | Improvements | \$950 |
| Fire lane widening and replacement of boat launch at Bay View Park | Improvements | \$29,221 |
| Year 1997: | | |
| Powers Lake Heights | .1 miles of pavement resurface | \$5,000 |
| Nippersink area | .5 miles of pavement resurface | \$25,000 |
| Jefferson Island | .5 miles of pavement resurface | \$25,000 |
| Knolls area | 1.775 miles of pavement resurface | \$88,750 |
| Storm drains put in on Lake Park Drive in Knolls | Improvements | \$8,075 |
| Year 1998: | | |
| 93 rd street | .53 miles of pavement resurface | \$26,500 |
| Knolls area | .51 miles of pavement resurface | \$25,500 |
| Storm drains put in on Lake Park Drive in the Knolls area | Improvements | \$2,000 |
| Year 1999: | | |
| Powers Lake Heights | .15 miles of pavement resurface | \$7,500 |
| 400 th Court in Jefferson Island area | .15 miles of pavement resurface | \$7,500 |
| 93 rd street | .7 miles of pavement resurface | \$35,000 |
| Knolls area | .4 miles of Pavement resurface | \$20,000 |
| Total: | | |
| | 7.63 miles of road | \$421,496 |

Data submitted by the town of Randall in a letter to the Department dated August 13, 1999

Concerning the portion of the proposed village in Town of Bloomfield, the following projects have been completed since the Department's 1992 Determination:

1. Powers Lake Road - seal-coating and wedge in 1991, 1993 and 1996 at a cost of \$59,100.
2. Tombeau Road - seal-coating and wedge in 1994 and blacktop in 1999, at a cost of \$21,980
3. Circle Drive - seal-coating and wedge in 1994 at a cost of \$4,300
4. Rose Gardens received a Grader Patch in 1995 at a cost of \$3,600.
5. 92nd Street - blacktop in 1998 at a cost of \$8,600.³⁰

The total cost of the roadwork reported by Mr. Banks was \$97,580. In addition grading and paving of 1,870 feet of Hilltop Road in the Nippersink Shinners 5th addition was completed in 1998 at a cost of \$150,000. Affected property owners were assessed on the basis of "buildable sites" per lot. The assessments are to be paid back in ten years, with nine years remaining.

To summarize, the automobile is by far the most frequently used means of transport to, from, and through the proposed village. However, the road system is geared more towards linking the area to external locations than it is to provide internal movement. In fact, the roads seem designed to prevent internal travel. For example, some of the Nippersink roads are very narrow and the gravel surface is washed out in places. In addition, no trespassing signs appear throughout the subdivision warning that these roads are not public and that unauthorized users will be prosecuted. Some attempts have been made to improve road travel through the proposed village. However, those efforts have been completely uncoordinated and serve to illustrate the problems of a community fragmented by various local jurisdictions. Transportation systems are an important indication of compactness and homogeneity. For example, in Pleasant Prairie the Department determined that the transportation system served to move people through and past the proposed village rather than to the village and within it. As a result, the Department found that the transportation system showed a lack of compactness and homogeneity, and the court upheld this finding.³¹ Powers Lake's transportation system also shows a lack of compactness and homogeneity.

2) Airports

Vincent Airport is located in Kenosha County and at the southern edge of the proposed village, contiguous to CTH "O" (110th Street). It is a privately owned airport with a 1,955-foot long undulating turf runway. Public use is allowed only under special emergency circumstances.

The airport plan for southeast Wisconsin identifies Vincent airport³² but does not make any particular recommendations regarding it, other than keeping it open. The Department has received no evidence of any plans to upgrade or change the facility.

³⁰ Written correspondence to the Department, dated September 22, 1999, from Ray Bank, Roads Supervisor for the town of Bloomfield.

³¹ Town of Pleasant Prairie v. Johnson, 34 Wis.2d 8, 13 (1967).

³² SEWRPC, A Regional Airport System Plan for Southeastern Wisconsin: 2010, Planning Report No.38. May 1987.

However, it should be noted that Kenosha County's solid waste management plan³³ does recognize Vincent airport. The plan delineates a 5000-foot buffer zone requirement around the airport which prevents the siting of any landfill in the lower half of the proposed incorporation area in either county.

3) Rail Transportation

There are currently no existing rail routes through the proposed village area.

G. Political Boundaries

1) County and Town boundaries

As can be seen from Map 7, on page 29, the proposed Village is bisected by the jurisdictional lines of three different town governments and two different counties. Territory is drawn from the Town of Bloomfield in Walworth County, and the Towns of Randall and Wheatland in Kenosha County. As a result of annexation to the Village of Genoa City in 1996, the boundaries of the Village of Genoa City have expanded to the north and now abut the southern edge of CTH "B" in the southern ½ of PLS section 25. The southwestern corner of the proposed village lies at the boundary between Kenosha County and Walworth County, along CTH "B" and very close to the Genoa City border. The proposed village also nearly touches the Village of Twin Lakes near the southeast corner of section 19. These boundaries have not been substantially altered since the Department's review in 1991.

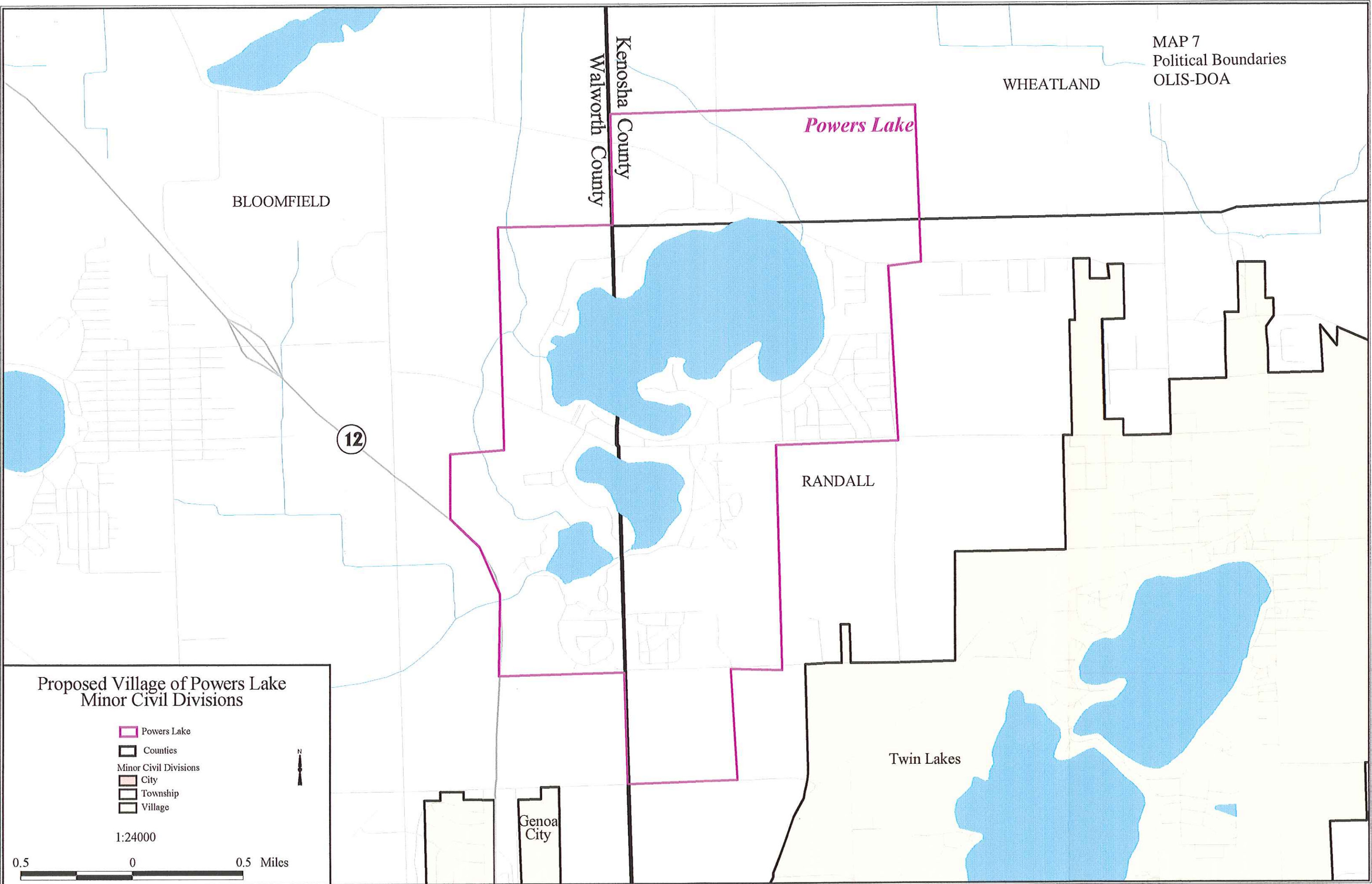
The petitioners would remove territory from the Town of Bloomfield which is not easily accessed from the principal part of the town because of the East Branch of Nippersink Creek, the associated wetlands, and the right-of-way of US "12," a limited access highway. Those streets which do provide access from the Town of Bloomfield, are CTH "B" and Powers Lake Road, which are approximately two miles apart.

2) Lakes Management Districts

Besides the political town and county boundaries, the proposed village area also contains two lake management districts. The first is the *Powers Lake Management District* which was formed in 1985. Its boundary (as well as land use) is portrayed by Map 8, on page 30.³⁴ The second district was formed in 1996 for the adjacent lakes Benedict and Tombeau Lakes. Should incorporation occur, the existing lake management districts would survive, following §33.26 (1), Wis. Stats. The districts would be subject to the authority of the new village, pursuant to §33.23, Wis. Stats. Under these and related statutes, the boundaries of the existing lake management districts could remain the same, or be altered to include one or both of the adjacent lakes, or the districts could be abolished altogether.

³³ SEWRPC Community Assistance Planning Report No. 129, *A Solid Waste Management Plan for Kenosha County, Wisconsin*, May 1989.

³⁴ Map is titled "Recommended Lake Use Plan for Powers Lake," and is taken from *A Management Plan for Powers Lake*, SEWRPC (1991) pg. 157.



BLOOMFIELD

WHEATLAND

Powers Lake

Kenosha County
Walworth County

12

RANDALL

Twin Lakes

Genoa City

Proposed Village of Powers Lake
Minor Civil Divisions

- Powers Lake
- Counties
- Minor Civil Divisions
 - City
 - Township
 - Village

1:24000

0.5 0 0.5 Miles



The two lake management districts appear to operate independently of each other with no real coordination, joint-planning, or common projects.³⁵ Richard Anderson, Chairman of the Lake Benedict/Tombeau Management District, stated the following in a July 12, 1999 letter to the Department:

Although the lakes had a common goal, the current projects and concerns were different. Powers Lake was concerned with acquiring wet lands as part of their comprehensive plan to preserve the environment. Benedict and Tombeau were concerned with the growth of exotic aquatic plants and the failing Lake Tombeau Dam, which controls the water level of the *three* (emphasis added) lakes. The special concerns of the 3 lakes could best be accomplished by 2 separate lake districts at least during the development years.

A lake management plan for Powers Lake was developed in 1991, the result of a cooperative effort by SEWRPC, the Powers Lake Management District, the U.S. Geological Survey, Kenosha and Walworth counties, and private consultants. A similar plan is currently being developed for Lakes Benedict and Tombeau. The plan is being funded by grants to the Benedict/Tombeau Management District from the DNR and U.S. Geological Survey.

Other than the two Lake Management Districts, there are no other special-purpose management districts currently in existence within the territory petitioned for incorporation.

3) Sanitary district boundaries

In 1992, the Towns of Bloomfield, Randall and Wheatland received funding for a *Wisconsin Fund Step-one* grant to be used for a study of the Powers Lake area. Map 9, on page 33, delineates the boundary of the study area. In 1992 the *Powers, Benedict & Tombeau Lakes Facilities Plan* was issued.

In 1994, SEWRPC amended its Regional Water Quality Management Plan - 2000. Amongst other things, the amendment recommended the following:

1. Add a Powers, Benedict and Tombeau Lakes sanitary sewer service area to the Regional Water Quality Management Plan -- 2000.
2. Add to the Regional Water Quality Management Plan - 2000 a new public sewage treatment plant to be located southwest of Tombeau Lake and Southeast of Pell Lake as a permanent sewage treatment plant.
3. The creation of a new utility or sanitary district for the Powers, Benedict, and Tombeau Lakes area to provide sewage treatment services. And that, at such time as the Powers, Benedict, and Tombeau Lakes area is represented by a utility or sanitary district, that the creation of a joint commission or metropolitan sanitary district be considered by the Pell Lake Sanitary District and the newly formed Powers, Benedict, and Tombeau Lakes area utility or sanitary district to operate the new sewage

³⁵ Personal communication with Richard Anderson, Chairman of the Lake Benedict/Tombeau Management District, and Paul DeMichael, Secretary of the Powers Lake Management District. July, 1999

treatment plant, major conveyance facility, and potentially the local collection systems.

The following is a description of the boundaries of the proposed sanitary district: the sanitary district boundary nearly conforms with the western boundary of the proposed incorporation, omitting portions of Nippersink Creek and associated wetlands. On the north, the boundary conforms with the incorporation petition. To the east, the sanitary district boundary extends beyond the petitioners' boundary, to include lands north and south of CTH "F" in sections 16 and 17. The proposed district also includes land zoned for exclusive agricultural use in the eastern one-half of section 19, and the northwest one-quarter of section 20, land not included in the territory petitioned for incorporation. The southern boundary of the proposed sanitary district omits the northwest one-quarter of section 30, Town of Randall, which is included in the territory petitioned for incorporation. The proposed sanitary district touches the Twin Lakes sanitary district boundary in sections 19 and 20, Town of Randall, further narrowing the potentially undeveloped area lying between Powers Lake and Twin Lakes.

It is worth mentioning that a sanitary district for nearby Pell Lake was formed in 1991. Pell Lake's district extends east until just west of County highway "U" and "B", where it intersects with U.S. highway 12. A wastewater treatment plant is currently under construction southeast of Pell Lake and south of the intersection of U.S. highway 12 and County "U" and "B" . It is scheduled to open in May, 2000. It should be noted that this plant was designed with the capacity to include the Powers Lake area if a sanitary district is formed for the area in the future. Map 10, page 34, shows the boundaries of the Pell Lake sanitary district.

Powers Lake
Proposed Sanitary

MAP 14

MAP 9

Proposed Powers Lake
Sanitary District Boundaries
SEWRPC

WHEAT
BRAND

STUDY AREA
BOUNDARY

F

Z

P

LAKES

18

POWERS

BENEDICT
LAKE

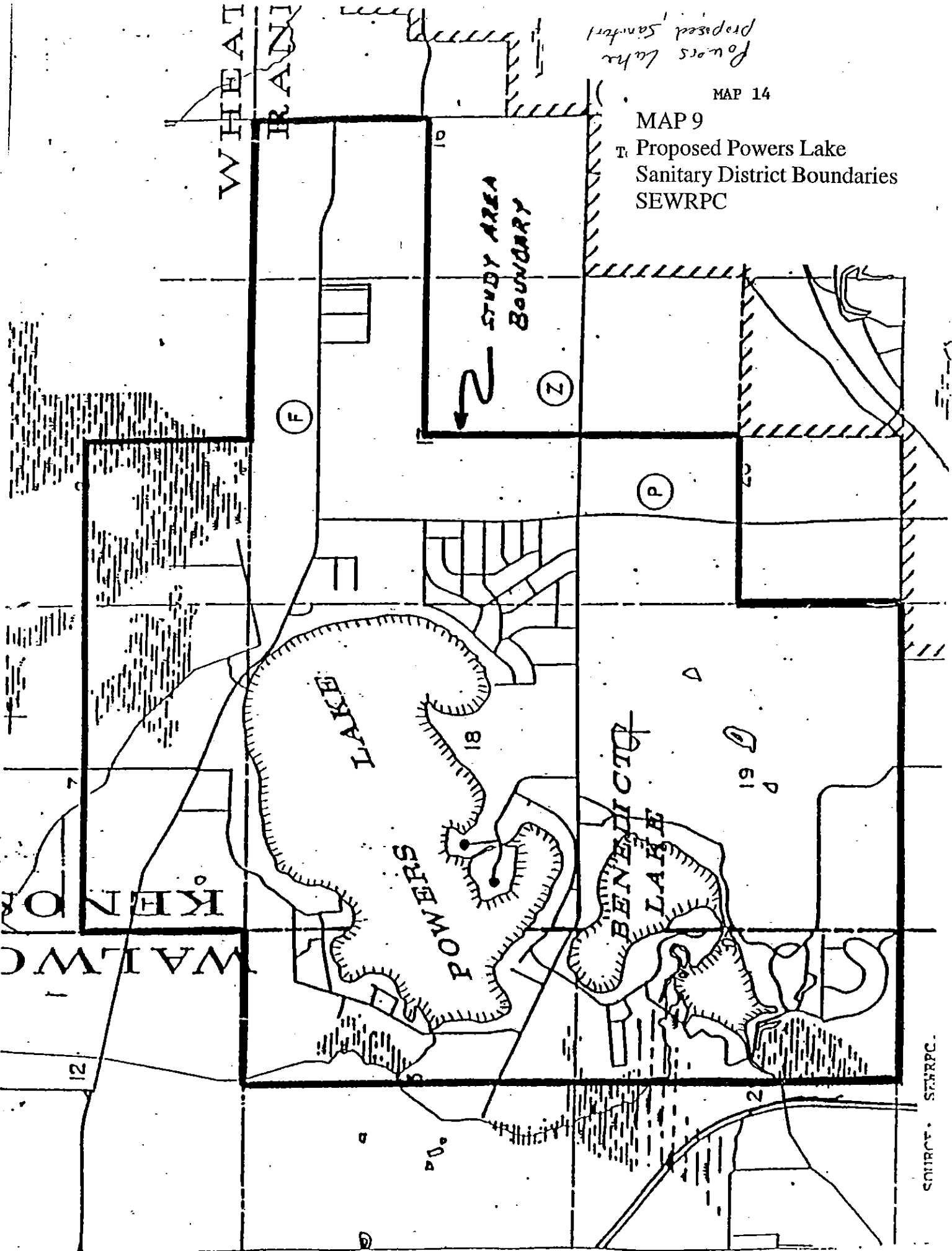
19

KENDON

WALTON

12

SEWRPC



4) School District Boundaries

In Wisconsin, boundaries of municipal governments do not currently affect school district boundaries. School districts are free to establish and maintain boundaries independent of residential development patterns -- the very settlement patterns which lead districts to levy taxes and authorize expenditures for teachers and facilities. Should a change in school district boundaries be desired, the affected school districts would have to jointly agree to such a change, usually a rare occurrence. If agreement cannot be reached, appeal procedures specified in Chapter 117, Wis. Stats., would need to be followed.

The proposed village of Powers Lake includes portions of three high school districts, and three elementary school districts. The boundaries for all of these districts happen to fall along county and township lines. Map 11, on page 36, provides the current boundaries. The elementary school districts include Genoa City Jt#2 (Brookwood Elementary), Randall Jt#1(Randall Elementary) and Wheatland Jt#1 (Wheatland Center Elementary). Students from the Randall district attend Wilmot UHS. Students from the Wheatland district attend Westosha Central and those in the Genoa City district attend Badger High school). Tables 2 and 3 are an estimate of the number of students in each school district from the Powers Lake area, as reported to the Department by the School Districts.

TABLE 2

Elementary Schools

| Elementary School Districts | Randall Jt. #1 | Wheatland Jt #1 | Genoa City Jt #2 |
|------------------------------------|-----------------------|------------------------|-------------------------|
| Number of Students | 120 | 13 | N/A |

TABLE 3

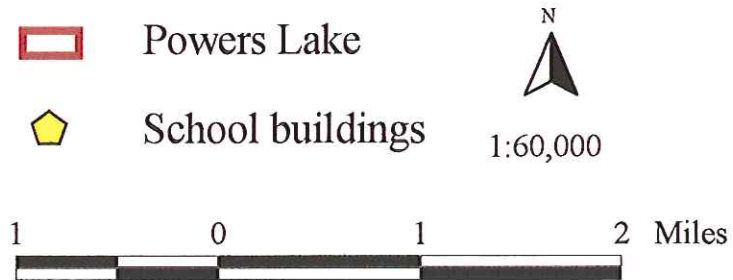
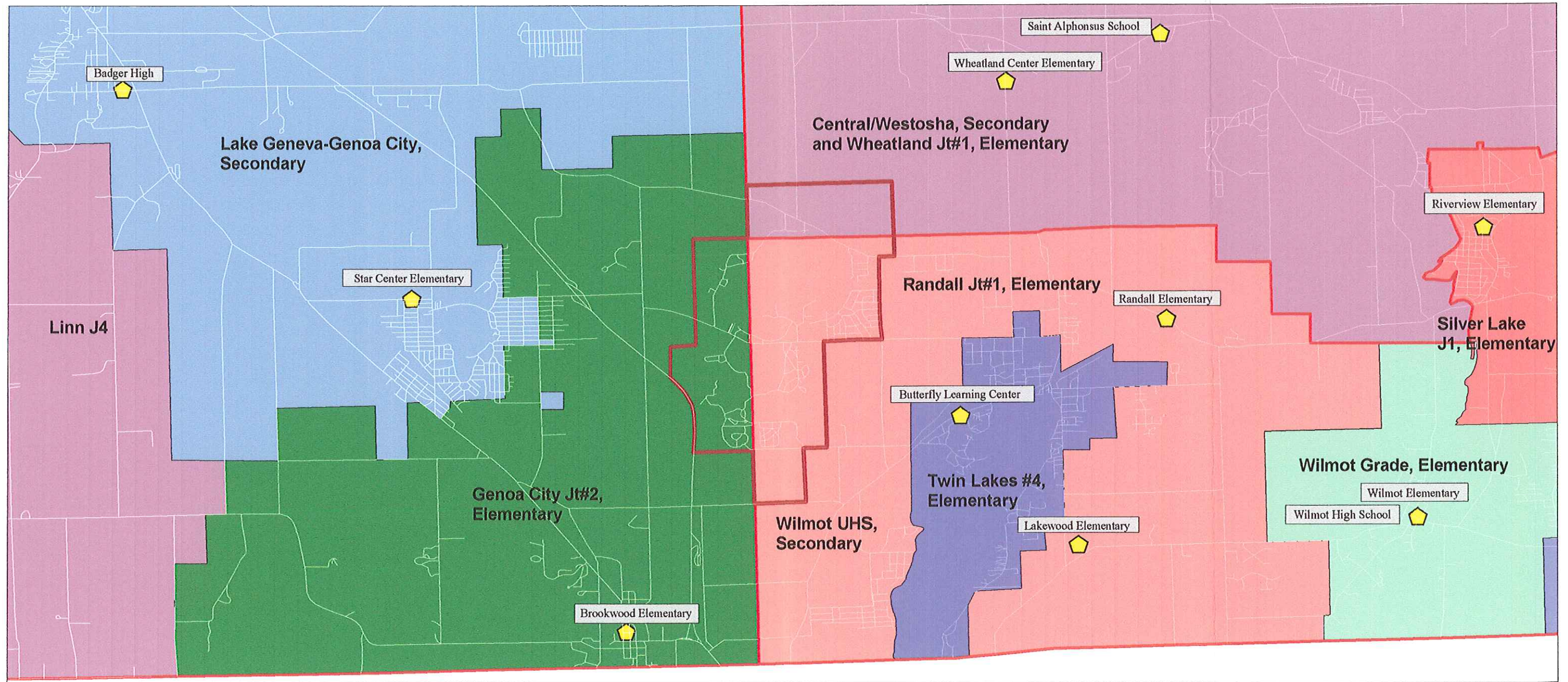
Union High School Districts

| UHS Districts | Wilmont UHS | Central/Westosha UHS | Genoa City UHS |
|----------------------|--------------------|-----------------------------|-----------------------|
| # of Students | 62 | 2-3 | 38 |

None of the schools are located in the proposed village. Because of this, students within the proposed village must travel to at least 6 different schools outside the area. This effectively forecloses across-village socialization and a sense of community identity among the young people and parents. Petitioners note that "Additions costing several million dollars each have been built by Randall Grade School, Wheatland Center School, Wilmot High School, Badger High School and Central High School. [In addition,] Brookwood Elementary School is building a new and larger facility."³⁶ Petitioners apparently use the fact of these additions to conclude that the number of school aged children within the proposed village area is increasing

³⁶ Petitioner's letter to the Department, September 9th, 1999.

Schools and District Boundaries in Powers Lake and Surrounding Communities



As shown above, some elementary school districts share boundaries with secondary school districts. And, those elementary school districts with distinct boundaries are contained as part of the surrounding secondary school district. For example, Powers Lake children residing in the Genoa City Jt#2 district would attend Lake Geneva-Genoa City high schools.

MAP 11
Schools and District
Boundaries
OLIS-DOA

in proportion with the rest of the area. However, this conclusion is disputed. Contact with the school districts indicates that population growth is expected to come from other areas, such as the Lake Elizabeth area and the Twin Lakes area.³⁷ Regardless of from where students come, the fact remains that there is no school in the proposed village, nor are there any plans to build a school.

H. Local Governments

As previously noted, the proposed village of Powers Lake area is bisected by the towns of Randall, Bloomfield and Wheatland and by Kenosha and Walworth counties. The result is a fragmentation of authority that has crippled efforts to resolve matters of area-wide significance such as land use, water quality, solid waste management and transportation.

Petitioners raise a number of specific complaints with regard to having five governments. First, the simple existence of five governments makes coordination and action difficult because instead of getting one government to act, five must be so moved. Uniformity is almost impossible because instead of the vision of one government, there are 5 visions and each vision may be different or even contradictory.

Second, county and town governments were never designed to address the types of urban problems being faced by the proposed village. Petitioners cite the legislative history to show that the drafters of the 1959 statutes were aware of this fact.

Third, zoning in the Powers Lake area is done at the county level. None of the three towns has their own zoning. Instead, Kenosha and Walworth Counties enforce county-wide ordinances. The fact that two separate zoning codes exist administered by two different departments in two different jurisdictions makes uniform action for the area very difficult.

Fourth, Petitioners point out that neither Kenosha nor Walworth County has a county development plan. Ideally, zoning ordinances are based on a plan and are designed to implement that plan. The fact that no county development plans exist, despite the fact that zoning for the area is done at the county level, is indicative of a lack of direction and long-term guidance for the area. Petitioners establish that the current system of government is not working and that incorporation would allow the area to be become better planned.

Fifth, Petitioners claim that the current fragmentation of governments deprives area residents of the ability to elect governmental officials who represent their interests. Petitioner's complain that Powers Lake is a minority in the towns of Bloomfield, Randall, and Wheatland and that the balance of power is therefore with non-Powers Lake residents. As a result, the interests of Powers Lake residents are chronically ignored.³⁸ Intervenors dispute this claim. They argue that many town and county officials hail from the Powers Lake area. For

³⁷ Personal communication with Yvonne Lemmerhirt, Randall School District; Bill Leher, Genoa City School District; John Ross, Lake Geneva/Genoa City UHS; William Roeder, Wheatland School District; Richard Goetsch, Wilmot UHS; Doug Potter, Central/Westosha UHS. Interviews taken in August, 1999.

³⁸ Patrick Meehan, An Evaluation of the Proposed Incorporation of the Powers lake Community, Meehan & Company, Inc. (1998), pg. 45.

example, two of the five Randall Town Board members live within the proposed village area, four of the seven Park Board members, three of the seven Planning Board members and four of the five Board of Review members.³⁹ Intervenors argue that such heavy Powers Lake representation at the town level means that Powers Lake area interests are being voiced. Powers Lake representation is much less in the town of Wheatland. There are no board members that hail from the area and only one planning commission member.⁴⁰ In the town of Bloomfield, there are no representatives on the 5-member Bloomfield Town Board. There is one member from the Powers Lake area on the Police and Fire Commission. There are no other representatives from the Powers Lake area in Bloomfield town government.⁴¹

However, regardless of the representation issue, it is clear that overall, the multiplicity of governments in the area is problematic. Multiplicity leads to a lack of coordination, a lack of uniformity and vision, and chronic inefficiency. The Department recognizes that incorporation could solve many of these difficulties.

I. Population

Petitioners project a 12.6% increase in the population of the proposed village. This is based on data gathered from the Department of Administration, Demographic Services Center for the time period between 1990 and January 1, 1998. An additional increase of 2.7% was projected from that date to the present. Using the 1990 census figures as a base, Petitioners estimate the area population to have risen from 1150 persons in 1990 to 1329.

Many of the residents continue to reside in the area only seasonally. For example, a review of the 1999 assessment roll reveals 379 local addresses and 296 out-of-town addresses. Petitioners point to the fact that the number of seasonal residents has declined 9.4% since 1990, while local addresses have increased 9.3%. Intervenors argue that despite this, a substantial number of addresses are out of town; 296 (or almost half).⁴²

J. Building Trends

Building trends for the proposed village area have continued to move away from commercial development and towards single family residences. In Kenosha County alone 17 parcels were rezoned from commercial/resort to residential between 1991 and 1998. Between those same years there were no conversions to commercial use. In addition, according to Petitioners, land zoned "A-2" (Agriculture) is being reviewed for possible conversion to "R-2" (residential).⁴³ The following paragraphs reinforce this trend.

³⁹ Intervenor's brief, pg. 54 (1998).

⁴⁰ Personal communication with Don Smitz, Chairman for the Town of Wheatland, September, 1999.

⁴¹ Personal Communication with Martha Wells, Chairman for the Town of Bloomfield, October, 1999 (Wells also indicated that a member of the Parks and Recreation Board from the Powers Lake area was recently replaced due to lack of participation)

⁴² August 13, 1999 letter to the Department from the Town of Randall (pg. 2).

⁴³ September 17, 1999 letter to the Department from Kenosha County Department of Planning and Development. And July 30, 1999 letter to the Department from Conservation Of Our Lakes, Inc. (COOL).

Town of Wheatland. Six new single family residential dwellings have been built in the Town of Wheatland since 1992. There have been no applications to rezone property to commercial uses. However, there was one rezone from commercial to residential in 1994 when Pretzman's old store was converted to residential use.⁴⁴

Town of Randall. Since 1992, 148 new homes have been built within the Town of Randall. Of these, 77 were built within the area proposed for incorporation. Of these 77 homes, 24 had out-of-state addresses on the building permits. Also, since 1992, 6 structures were issued permits for "substantial remodeling", all of them homes. Additionally, lands within the Town have been rezoned out of commercial use. For example, land along Bloomfield Road has been rezoned to "R-4" (Single Family Residential). Formerly they were zoned "B-2" (Community Business District). Also, areas were converted to "PR-1" (Park-Recreation District) and are now single family residential. Formerly they were resort-type rentals. The trend away from commercial uses is clearly seen in the Town of Randall.⁴⁵

Town of Bloomfield. Since March of 1996 there have been 17 new single-family homes permitted.

Further, it is significant that no attempts have been made to add commercial buildings to the area. No rezones to commercial use have even been attempted. In fact, the trend goes the other way, as Pretzman's old store was converted to residential.

K. Shopping

The primary land use in the proposed village area is overwhelmingly residential. Commercial activity is very limited. Those businesses that do exist tend to be taverns and restaurants, resort businesses, boat rentals and sales, and boat fueling and launching facilities. Also, there is a U.S. Post Office and a town fire station. Some of these commercial activities occur along CTH P, while others are scattered throughout the area. There is no definite shopping area in the proposed village. As in 1992, there are still no continuously operating churches or schools. There are no auto repair shops, banks, professional offices, pharmacies, medical clinics, barber/ beauty shops, clothing stores, sports stores, or gift shops. There is no town square or town hall. There is no permanent library. The Kenosha County Bookmobile does stop at the Post Office for an hour once per week, however, this should not be construed as being the equivalent of a library.

Petitioners identify approximately 38 businesses in the area. As one would expect, this number has changed slightly over the past six or seven years, and even during the course of the current incorporation petition. For example, at the time of the May, 1998 public hearing, Petitioners identified 43 businesses. The most recent figure, as of August 16, 1999, is 38 businesses. According to Petitioners, ten new businesses have been formed since the time of the 1991

⁴⁴ July 27, 1999 letter to the Department from Sheila Siegler, Town of Wheatland Clerk, to Phyllis Kaskin, Town of Randall Clerk., 7/27/99.

⁴⁵ July 27, 1999 letter to the Department from Kenosha County Department of Planning and Development.

incorporation action,⁴⁶ while others have changed ownership. However, the vast majority of these are merely cottage industries. Many are operated without any business listings in the local phone book or visible signs posted on the property. Petitioners point to advertisements in regional phone directories such as the *Walworth County Western Racine/Western Kenosha Counties Directory*. They argue that these ads constitute the type of advertising normally associated with village businesses. However, the fact remains that many Powers Lake area businesses do not advertise at all. Those that do so in regional markets which indicates a focus beyond the residents of the local community.

The businesses identified by Petitioners do not attempt to meet the day-to-day needs of the residents. Petitioners place tremendous weight on the food goods available from a tavern known as the "Pit Stop". They argue that residents daily needs may be met in a single cooler containing such things as bread, milk, orange juice, yogurt, eggs, butter, etc. The precise contents of this cooler is in dispute, as is evident from the briefs and responsive briefs of Petitioner and Intervenor. However, even if this cooler were packed full of food, it is clear that it could not possibly meet the daily needs of 1329 people (and more in the summer).

Petitioners also cite "Twin Lakes Upholstery & Woodworks" as being a place where residents may obtain screws, bolts, nuts, nails, and other day-to-day hardware needs. Petitioners liken it to a hardware store. However, it does not look like a hardware store and is not advertised as such. There are no signs posted or any other advertising to make residents aware of the availability of hardware goods.

It is clear from recent past determinations that the presence of shopping and professional services is extremely important in incorporation proceedings. For example, in Delavan Lake (1989), the presence of 84 businesses was insufficient to meet the standard since the 84 businesses included "[N]o grocery stores, department stores, pharmacies, doctors' or dentists' offices, insurance agencies, churches, schools or post offices."⁴⁷ However, it is significant to note that the community center in Delavan Lake did contain a bank, restaurants, service stations and various retail establishments.

Petitioners cite Lake Como (1969) and Chain O'Lakes (1982) for the notion that shopping opportunities need only be very minimal. On page 7 of their brief, Petitioners cite the following language from Chain O'Lakes:

It is not mandatory that all services be available or that each petitioned territory maintain a postal station or telephone exchange strictly within its boundaries in order to fulfil the statutory requirements... The critical issue is the existence of retail facilities and services, not necessarily their size; the commercial center can be small, as noted in

⁴⁶ New businesses identified by Petitioners not in operation in 1991 include: Aero-Kimball Signs (sign and display design and fabrication); ANDCO, Inc. (commercial/industrial water filtration systems sales); Lake Point (Bed and Breakfast); Twin Lakes Upholstery; RJR Marketing (Advertising); Chris' Woodworking (Contractor); Bob Krkijus (home remodeling and repair); Bourbon Street Ltd. (General Contractor); Mark Schoenbeck (Landscaping contractor); and Kent Kruzan (Home Rehabilitation). *An Evaluation of the Proposed Incorporation of the Powers Lake Community into a "Village" Under Wisconsin Statutes Section 66.016* by Meehan & Company, Inc. Appendix A (May, 1998).

⁴⁷ Delavan Lake, pg. 24 (1989).

Chain O'Lakes, but it must be present and viable, and be able to meet the day-to-day needs of a majority of the residents in an isolated (non-metro) community.⁴⁸ (emphasis added by Petitioners)

However, such facilities and services do not exist in Powers Lake and cannot therefore meet the daily needs of residents. In contrast, Lake Como had a shopping area that could satisfy the daily needs of its residents, even in spite of its close proximity to shopping opportunities in Lake Geneva. Similarly, Chain O'Lakes possessed retail business and services such as groceries, barbershops, and restaurants.

Both of these past determinations involved lakeshore/recreational communities very near larger communities, but both proposed villages were able to develop and maintain a shopping area which could meet the daily needs of their residents. It was not considered surprising or detrimental that more major shopping excursions were focused on the larger community nearby. This would no doubt be true, to varying degrees, for every village. But every true village would have its own custom of shopping within its boundaries for the basic necessities.

The trends established in these earlier determinations by the Department were further explored in the decisions of Stone Bank (1995) and, more recently, in the incorporation of Bohners Lake (1999). The Department found that Stone Bank met the statutory requirements of S. 66.016(1)(a) for a developed community center and for homogeneity and compactness. The Petitioners cite Stone Bank in their post-hearing brief to argue that the mere existence of retail facilities and services, not necessarily their size, was sufficient to meet the requirements of standard 1(a).¹ The Department distinguished Stone Bank from Delavan Lake by stating

"The essential difference between the Delavan and Stone Bank petitions are the churches, the school, the activities which, though minimal, can nevertheless be said to involve the entire community. ... Stone Bank physically has the potential to be, if it doesn't already physically function as, one community, whereas Delavan included separate enclaves or neighborhoods located around (the) periphery of Delavan Lake, widely separated by distances measured in miles."⁴⁹

By contrast, Powers Lake is similar to the Delavan Lake community as described in the Stone Bank decision, a group of neighborhoods or subdivisions on three different lakes with no shopping area which can satisfy the daily needs of its residents. The "village core" area of Stone Bank contained, for example, an elementary school, a branch bank, a general store, and a bakery/convenience store/gas station, as well as a year-round church and several other businesses. In the later Bohners Lake decision (1999), the Department held that the "village core" of Bohners Lake, while rudimentary, contained a concentration of stable and thriving businesses whose inter-relationships promoted successful retail trade activity. The Department held that, "As in the similar case of Stone Bank, that the church, school, telephone exchange, restaurant, ball diamond, and other business amenities minimally meet the statutory term 'reasonably developed community center'". (p. 46) In Bohners Lake the Department found that the location and inter-relationship between the elementary school, church, businesses and recreational facilities located in

⁴⁸ Chain O'Lakes, pg. 40 (1982).

⁴⁹ Stone Bank, p. 43 (1995).

the village core, when considered together, provided a focus for community activity and fostered a common community identity. One factor, considered by the Department, that contributed to this core of activity was the decision of the Burlington School District to relocate the elementary school to a more centralized and accessible location, to enlarge the school and to include facilities capable of both school and community use.

Both the Stone Bank and Bohners Lake decisions satisfy what we believe to be the statutory intent that there be shopping opportunities that meet the daily needs of its residents despite the proximity of nearby shopping establishments in neighboring cities and villages. A certain threshold of goods and services must be met within the proposed incorporated area. Despite their statements to the contrary, the petitioners in Powers Lake have not demonstrated that these opportunities are available in the proposed village. In Bohners Lake, the Department did consider such factors as the stability of the land use in question; the direction and intensity of land use trends, and the magnitude of growth in home building activity related to the installation of public sewers in Bohners Lake when interpreting the statutory term "reasonably developed community center" under S. 66.016(1)(a), Stats. However, the Department held that the community center must first minimally comply with statutory intent, stating; "... flexibility has limits and basic necessities cannot be waived."⁵⁰

M. Employment

Employment opportunities are extremely limited within the proposed village area, as they were in 1991. Some opportunities do exist, such as the "Golf Gift Shop". However, most of the other employment opportunities tend to relate to taverns, restaurants, and recreation-related businesses. Most of these are seasonal in nature, such that the need for employees decreases drastically in non-summer months. As a result, it is necessary for most full-time residents to travel outside the proposed village area to seek employment or to target customers for their home-based enterprises. It is clear that employment patterns do not support homogeneity or compactness requirements.

N. Social Customs

Most of the social interactions in the proposed village area are based on the three lakes and on particular neighborhood-subdivisions. Examples are the Austin Club, the Lake Knolls Civic Association, Nippersink Community Club, the two lake management districts, Conservation Of Our Lakes (COOL), Powers Lake Yacht Club, and the Three Lakes Community Association. Other organizations are based on specific activities. Examples are Powers Lake Sportsmen's Club, Nippersink Golf Leagues, Barn Burns Golf League, Couplets Bowling League, the Lunch Bunch, the Ladies Investment Club, a men's pool league, and a bonsai club. Some of the organizations provide services to the local community; the Powers Lake Sportsman's Club offers shooting safety courses and the Three Lakes Community Association publishes a regular newsletter. However, most of the social organizations exist only for private interests and do not serve the wider community. Many of the organizations cited by Petitioners have unknown memberships, or memberships so low they might more appropriately be considered as gatherings of friends or neighbors. Also, the memberships of many of the organizations are comprised heavily of out-of-town residents. These organizations naturally become dormant once the summer months pass.

⁵⁰ Bohners Lake, p. 46 (1999).

Generally, there is a lack of social cohesion across the proposed village area. As indicated above, the social interactions and identity are based on individual neighborhoods or lakes. A good example of this is the existence of two separate lake management districts, despite the lakes being in such close proximity and despite the fact that they share the same drainage basin. There is almost no coordinated activity between these districts. Instead, the Powers Lake Management District appears oriented towards the town of Randall, while the Lake Benedict/Tombeau Management District appears oriented towards the town of Bloomfield. Both districts hold their annual meetings at the Randall and Bloomfield town halls.

Petitioners maintain that the lakes and their lakeshores provide a focal point for social interaction and for the social cohesion necessary to satisfy §66.016(1)(a). However, the lakeshores are almost entirely privately owned. There are only two small parks on Powers Lake and none on Tombeau or Benedict Lakes. Instead, the lakes serve as a focus for private retreat and private recreation only. The clubs and social organizations are primarily for the edification of lakeshore property owners rather than the wider community. In fact, it was only recently that a public boat launch was improved to allow access for non-lakeshore owners. Therefore, because the lakeshores are private, many area residents must seek social and recreational opportunities elsewhere.

What other social opportunities might exist? Schools and churches are often a basis for social interaction and community cohesion in rural villages. However, the proposed village has neither of these.

Schools often mold community allegiance through scholastic, social and athletic activities. However, the territory proposed for incorporation lies in three different school districts and as a result, students must be bussed in three different directions to different schools. The territory is pulled to three different external areas. It lacks the status of a separate community with its own schools and the social activities that tend to follow. It should be noted that in Wisconsin the determination of school boundaries is entirely separate from the process of municipal governance. Because of this, school district boundaries are still considered to be neutral with respect to incorporation.⁵¹ However, although the school district boundaries themselves are considered neutral with regard to the homogeneity and compactness requirement, the mere fact that students and parents are pulled in three separate directions for education reflects on the disparity and fragmentation of social customs in the area.

Regarding churches, the Powers Lake area has only one church and it is seasonal in operation. It is unheated and provides no restroom facilities, nor does it sponsor or host any organized activities that may serve to attract residents from across the community (except for weekly services in the summer). Clearly those residents that worship regularly do so outside of the proposed village area. Petitioner argues that consideration of churches on the issue of social interaction is inappropriate. On page 13 of its brief, Petitioner argues that by considering churches, the Department is violating the constitution by requiring homogeneity of religion. However, Petitioner misunderstands entirely the purpose for which churches are relevant in this incorporation proceeding. The Department does not require a homogeneity of religion, nor is it concerned in the least with the types of religious denominations or worship methods that

⁵¹ Pewaukee (1991).

might exist in a community petitioning for incorporation. Instead, the existence of churches often points to the social interaction opportunities that exist in villages. In past determinations, the Department has held that social activities centered around churches is evidence of a sense of community identity.⁵² In other determinations, failure to have a continuously operating church was found to suggest that social activities took place elsewhere.⁵³ Both schools and churches are oftentimes a major focal point of social interaction and community activity. If these things do not exist in the proposed village then these social and cultural ties must lie primarily elsewhere.

Finally, the Petitioners cite Conservation Of Our Lakes (COOL) as evidence of a community-wide social identity. The sole purpose of COOL is to promote incorporation of the proposed village. Its membership is limited to 12 residents. Clearly, the existence of COOL, by itself, cannot demonstrate community-wide interest or show a common identity among area-wide residents, however civic-minded its purpose may be.

In the course of reviewing this most recent Powers Lake incorporation petition, the Department has researched the academic literature on rural communities. It found that a community consists of both *strong* and *weak* ties. Strong ties are those intimate bonds between family members and close friends. Weak ties are those contacts one makes in daily life with strangers or those not as familiar. Weak ties are often oriented to the locality where people live. Weak tie interactions concern matters related to a common interest in the locality. They tend to serve public rather than private interests. Community stability depends on both weak and strong ties. Weak ties are needed to bind the strong ties into a larger social structure. An absence of weak ties may cause social fragmentation of the community into the composite strong ties. While strong ties are prevalent in rural communities, weak ties may be more difficult. Rural residents' daily needs may take them well beyond the boundaries of their communities and in fact, these extra-local connections may be even stronger and more influential than the ties within the local society. The shortage of weak ties in rural areas can retard the development of the community.⁵⁴

Applying these concepts to Powers Lake, the Department previously noted that many of the social interactions of the residents of Powers Lake take place outside the proposed village and many of the business activities within the proposed village are oriented towards a larger market outside of the immediate area. There is no main street or village square or village hall or community center or school or grocery store. Powers Lake may have a difficult time developing the weak ties, and as a result, the area may consist of only fragmented social units. In fact, this is the current situation in which Powers Lake finds itself. Most of the social activity is confined to specific neighborhoods or subdivisions. Residents appear to identify with their neighbors or co-workers, or school, or church. They do not identify with the proposed village area as a whole.

O. Community Center

Wisconsin statute section 66.016(1)(a) requires a reasonably developed community center, including "some or all of such features as retail stores,

⁵² Hewitt, (1973), Newburg, (1973).

⁵³ Rockfield, (1964), Fitchburg (1982).

⁵⁴ Kenneth P Wilkenson, The community in Rural America, Greenwood Press (1991)

churches, post office, telecommunications exchange and similar centers of community activity."

Courts interpreting §66.016(1)(a) have used the following language to describe what is meant by community center:

Analysis... reveals that there is no dominant community center in the area proposed to be incorporated which might serve as a focal point for the Town's social and business activities. While there are some such facilities in existence, such as two post offices, firehouses, grocery stores, taverns, service stations, and small retail stores; there are no banks, professional offices, medical facilities, pharmacies, or modern shopping centers... [therefore] it is the opinion of the director that the entire territory of the proposed village is not reasonably homogenous or compact.⁵⁵

Also of concern is the requirement that the area have a reasonably developed community center which is the focal point for the common social, economic and cultural ties that bind the community. It is the opinion of the Director that the crossroads facilities heretofore enumerated do not constitute a reasonably developed community center. The fact that the only church in the core is now empty and unused would suggest that community activities occur elsewhere. There is no facility for public gatherings, no park, no town square or municipal center, no bank, no telephone exchange. The crossroads development which exists is too limited in facilities to function effectively as a community center.⁵⁷

Petitioners argue, both in 1991 and today, that Powers Lake itself is the most important focal point of the area and forms a reasonably developed community center, in and of itself. In the 1991 *Powers Lake* determination, the Department held;

"A lake will always be a focal point of public activity. But a lakeshore area may or may not be. If the lake is surrounded by private cottages, it will not be. If one part of a lakeshore has a public park, a marina, restaurants, motels, public buildings, and gift shops and other retail enterprises, then the lakeshore area can easily become the center of community activity".⁵⁸

There is no basis in the statute or in past determinations for the notion that a lake itself may constitute the required "community center". Petitioners cite the Department's determination in Chain O'Lakes as support, however, the Chain O'Lakes determination discussed the *lakeshore* as a community center, not the lake itself.

Unlike a lake, a lakeshore may be used for commercial establishments, public buildings and parks, and the kinds of land uses the Legislature envisioned when it set the requirement of a "reasonably developed community center". Therefore, the question is whether any of the lakeshores in the Powers Lake area could constitute a community center.

⁵⁵ Schmidt v. Department of Resource Development, 39 Wis.2d 46, 62 (1968).

⁵⁷ Scharping v. Johnson, 32 Wis.2d 383, 388 (1966).

⁵⁸ Powers Lake, pg. 19 (1991).

The Department discussed the public lakeshore facilities available in Powers Lake in its' 1991 determination:

"No lakeshore area on any of the lakes can serve as a community focal point for the entire "village" area. There is no town or community public park of any size on any of the lakes. The lakes serve as a focus for private retreat, private recreation only, in addition to the occasional fishing derby or larger party/event sponsored by a singular local club. It must, therefore, be areas outside the proposed village that serve as social and recreational gathering places for the vast majority of the residents."⁵⁹

As Intervenors correctly point out, the Powers Lake area is substantially the same now as it was in 1991. The proffered village "core" lacks the type of businesses and services that typically comprise the community center of communities to whom this Department has granted incorporation in the past.

In addition, the majority of the lakeshore areas in the proposed village of Powers Lake are still private, although two small lakeshore parks and a boat launch now exist and are available to the public. The boat launch was improved by the Town of Randall in 1996. Bayview and Lakeside parks, on the south shore of the lake, were formerly leased to the Lake Knolls Civic Association. However, in 1993 these parks reverted back to town control and are now open to the public. There is also public access to Powers Lake at a boat launch and "public park" established by the DNR in 1997

The pattern of development in the proposed village area has been along the lakeshores, rather than from a local focus, such as a nucleus commercial center. However, Petitioners argue that in the event the Department finds that the lake itself or the area lakeshores do not constitute a community center, then development along CTH P does. Activity along CTH P includes a few taverns/restaurants and a post office. Petitioners argue that both the Pit Stop and Post Office are particularly well established meeting places for the community. This is essentially the same argument made in 1991. In fact, in its 1991 determination, the Department rejected the post office as a community gathering place for the following reasons:

The entire proposed village area is saturated by rural route delivery from either the Genoa City post office or the Burlington post office. There is no requirement or necessity that any of the residents use the facilities of the Powers Lake post office; the post office boxes there are used strictly as a preference over home delivery, or by some seasonal visitors/residents. Since all year-round residents can get home delivery, it is unlikely that many would choose to have a post office box, especially if it was inconveniently located. If this post office was in a commercial area that included the possibility of procurement of daily necessities, it might be able to serve as a gathering place. In Powers Lake, however, it does not reside in such a community center; the post office is in leased space, on a county trunk highway, in essentially a drive-through area.

In addition to the Post Office, the proffered community center along CTH P includes the "Oakland Pit-Stop" (bar, restaurant, boat fuel, snacks, a cooler of milk, bread, butter, eggs, etc.), "Gabby's Resort" (bar, picnics, buoy

⁵⁹ Powers Lake, pg. 20 (1991).

rentals, parking and rooms), "The Old Mill" (restaurant and bar); the "Sit-N-Bull" (bar and packaged goods sales) and the DNR public boat launch. The businesses located in the proffered center are predominantly restaurant/bars or offer services to recreational and seasonal visitors. Petitioners argue that the food goods contained at the Pit Stop are sufficient to meet residents' daily needs. This is an extraordinary claim. In fact, several surveys taken on different days and at different times of the year, indicate that the offerings are often minimal in quantity and variety. However, the Department need not delve too deeply into the veracity of claims made about the cooler because the outcome of this matter does not hinge on the cooler alone. The proffered community center falls short in almost every way. There is simply no way that this area can meet the daily needs of the residents. Development along CTH P is mainly restaurant/bars. It should not be otherwise characterized so as to meet the requirements of §66.016(1)(a).

While petitioners have offered at least 10 new businesses within the area proposed for incorporation since 1991, none of these are located in the proffered community center. Also, the activities of most of these businesses are directed outside the local area and do not provide goods or services that meet the daily needs of the residents. The fire station is the only place capable of providing space for community gatherings or events. The petitioners also offered the seasonal church as a center of community activity. However, as previously noted, the church facilities do not provide space for regular community gatherings and, unlike other similar communities, is not identified with a "village core". Community gatherings are not possible at the existing church facility within the village, since it lacks both bathroom facilities and any running water. Map 12, on page 49, shows businesses in the Powers Lake area listed by the Wisconsin Department of Commerce as of 1997.

As indicated above in the discussion of "social customs", on page 30, the Department has researched the academic literature on rural communities. The research reveals that achieving a functional community center in a rural area can be challenging. Rural residents tend to travel wide distances outside of the community to meet daily needs such as work, school, shopping, recreation, socializing, and worship. They may have strong ties to the community but not the weaker ties. This tendency is thought to be a major barrier to development of community in rural areas. The lack of weak ties leads to the lack of a sufficient material density sufficient to for social community and solidarity.⁶⁰ This problem is accentuated in Powers Lake by the nearby presence of Twin Lakes, Genoa City, and Lake Geneva. Unlike Powers Lake, these communities do provide shopping and social opportunities. Also, because of the poor transportation system through the proposed village area, it is just as quick in many instances for residents to shop in these areas. Because needs can be conveniently met in these nearby communities, there is little demand for such services in the proposed village area.

In one treatise on rural sociology, The Community in Rural America, Kenneth Wilkenson identifies a lack of local orientation as a major problem for rural communities. He states,

Rural residents tend to meet few of their daily needs together in the rural territory they share. This tendency could be a major long-time contributor to what only recently has come to be recognized a serious barrier to the development of community in rural areas. A major problem

⁶⁰ Kenneth P Wilkenson, The community in Rural America, , pg. 8. Greenwood Press (1991)

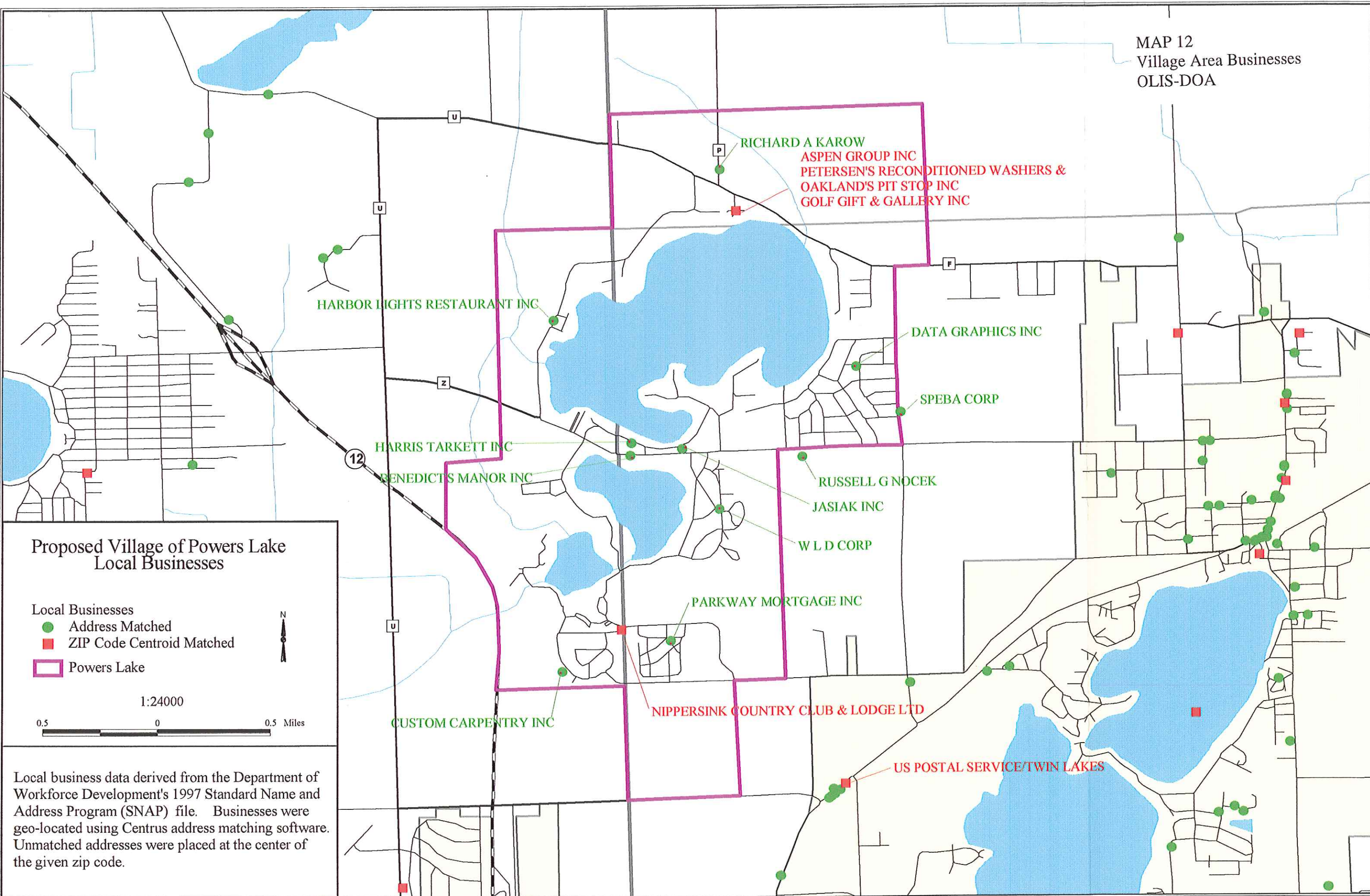
of the rural community, therefor is the lack of sufficient material density to support the level of moral or dynamic density needed for organic solidarity in modern times. (pg. 8)

Perhaps a simpler way of expressing this idea is found in an article in *Architecture* magazine which interviewed journalist/author, Andrew Ross, on his study of the planned community of Celebration, Florida.⁶¹ Ross concluded that Celebration was a "one-dimensional" community where deeper social relationships were more often based on affiliation with the school or churches or other activities, which didn't necessarily depend on proximity. He states, "People's sense of community was formed more around their experience of hardship and adversity than as a result of the physical advantages of the city plan." (pg. 63) Similarly, the sense of community attested to by the petitioners may come from the hardships or adversity of having 5 different governments to deal with. However, this sense of community is not supported by the network of loose relationships, organizations, services and institutions needed to sustain a community.

Applying these concepts to the Powers Lake community, it appears that, while the residents may feel a physical and social identity with the Powers Lake proposed village area, their more established social relationships are to their neighbors/co-workers, their church, or their children's school. Physically, their ties may be more towards their surrounding subdivision or the nearest lake. The Department observes that the businesses, groups, and institutions that do exist in the Powers Lake area are either smaller neighborhood-oriented groups or are oriented to seasonal guests, tourists, and a larger regional market. In his discussion of the importance of locality-oriented activity in forming a rural community Wilkinson states, "Locality-oriented actions tend to serve the public rather than private interests. Locality orientation is the hallmark of community action." (pg. 89) This locality-oriented activity is what appears to be lacking

⁶¹ Lang, Ho, Cathy, *Architecture*, September, 1999. Underwriting the American Dream, pg. 63.

MAP 12
Village Area Businesses
OLIS-DOA



**Proposed Village of Powers Lake
Local Businesses**

- Local Businesses
- Address Matched
- ZIP Code Centroid Matched
- Powers Lake



1:24000



Local business data derived from the Department of Workforce Development's 1997 Standard Name and Address Program (SNAP) file. Businesses were geo-located using Centrus address matching software. Unmatched addresses were placed at the center of the given zip code.

DETERMINATION

Natural Boundaries, Natural Drainage Basins, Soil Conditions

As previously described and analyzed, the boundaries selected for this incorporation petition largely correspond with many of the natural attributes of the area.

Transportation Facilities

All of the county trunk highways bracket the proposed village area. They primarily serve to tie the territory to the other incorporated entities in the area: Twin Lakes, Genoa City, and Lake Geneva, rather than to tie it together as a separate homogeneous whole.

Although county trunk highways "B/O" and "U/F," along with "P," facilitate access through, and within, the petitioned territory, there is also an extensive internal transportation system, albeit one that is dysfunctional in several locations. While these breaks in the internal circulation pattern serve to inhibit "neighborliness" by isolating residential areas from one another, the breaks in internal circulation patterns are not so pervasive as to detract from a general pattern of physical compactness and homogeneity. However, the Department notes that the current conflicts involving neighboring subdivisions in the Nippersink area and the town of Randall on the conversion of private gravel roads to paved town roads, illustrates a lack of coordination and common goals regarding the maintenance and improvement of the local road system needed to facilitate internal circulation. Nevertheless, the transportation facilities are found to meet the statutory requirements for homogeneity and compactness.

Previous Political Boundaries

This petition would create a new political boundary which considers both the natural and built environment, while previous political boundaries overlaid the area with three townships and two counties without apparent consideration for either. By encompassing all of the existing Powers Lake Management District boundary, as well as the newly formed Benedict/Tombeau Lake Management District, the petitioners' boundary could also serve to emphasize coordinated management of the attributes of all of the lakes, rather than to simply focus on one of them. The existence of two separate lake management districts does not facilitate the coordinated management of the environmental and safety issues associated with the three lakes. The Department acknowledges that the creation of one local government unit would contribute to the coordinated management and regulation of these resources. The proposed village boundary is mostly coterminous with the sanitary district boundary recommended in the Powers/Tombeau/Benedict Facilities Plan in May, 1992. The creation of a sanitary district for the Powers Lake area has not been initiated. However, the Pell Lake Sanitary District has built a treatment plant that has the capacity to serve the proposed sanitary district area and the creation of the proposed village would not prevent sanitary sewer service from being extended to remaining unincorporated areas. Therefore, the need for the petition to consider homogeneity and compactness in this proposed political boundary versus previous political boundaries is considered to be met.

Boundaries of School Districts

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

For that reason, school district boundaries per se are considered to be neutral with respect to municipal incorporation.

Shopping and Social Customs/Community Center

Powers Lake continues to lack the basic elements that lend a community its social and physical cohesion. As in 1991, there is not a sufficiently developed community "core" that contains a combination of institutions, goods and services, and recreational/social opportunities that are necessary as a focus of community-wide identity. In spite of a growing population and the increasing number of year-round residents, the facilities to meet the basic daily needs of these residents do not exist within the proposed village. What goods and services that are available within the village are not aimed at local residents, but exist to serve recreational visitors and a wider regional market.

There has not been any significant increase in commercial use within the proposed village since the 1991 determination and, in fact, several properties have been converted from commercial to residential uses.

With the exception of the fire station, there are no facilities within the village suitable for holding community gatherings and the community groups present in the proposed village are organized around neighborhoods or private interests such as sports, investing, yachting, etc. Many of these organizations do not facilitate a community identity since their activities are often seasonal and many of the members of these groups/organizations are from outside the local community or from a limited neighborhood area.

No schools or year-round churches, around which social and community activities are often organized, exist within the proposed village. It is clear that the majority of residents meet their social and physical needs outside of the proposed village. Therefore, because the activities of residents are externally oriented, rather than internally oriented, the employment, shopping and social activities of the residents of Powers Lake are neither homogeneous nor compact.

Conclusions

The Petitioners have not demonstrated that a self-sustaining core of public, commercial, professional and recreational facilities, which meet the statutory requirements for a "Reasonably developed community center", have been established in the proposed village of Powers Lake. Nor have they shown that

any of the factors considered by the statute have varied significantly since the Departments 1991 determination.

Therefore, it is the Department's conclusion that the territory proposed for incorporation does not meet the standards established in 66.016(1)(a) for the incorporation of an "isolated village".

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 those cited in footnotes)

Richard Anderson, Chairman of the Benedict/Tombeau Lake Management District. July, 1999

Brian Bleisner, WIDOT

Ray Banks, Roads Supervisor for the town of Bloomfield. September, 1999

Ben Coopman, Highway Commissioner for Walworth County. June, 1999

Paul DeMichael, Secretary of the Powers Lake Management District. July, 1999

Richard Goetsch, Wilmot UHS. August, 1999

Debora L. Grube, Zoning Manager, Walworth County Planning Zoning and Sanitation. September, 1999

Warren Hansen, Engineer for Farris Hansen and Associates. September, 1999

Phyllis Kaskin, Town of Randall Clerk. July, 1999

Bill Leher, Genoa City School District. August, 1999

Yvonne Lemmerhirt, Randall School District Superintendent. August, 1999

Tim Marquart, Save Our Community, August – September, 1999

William Roeder, Wheatland School District. August, 1999

John Roth, Lake Geneva/Genoa City UHS. August, 1999

Bonnie Schaeffer, Kenosha County Department of Planning and Development. September, 1999

Gary Sipsma, Director of Highways for Kenosha County. June, 1999

Don Smitz, Chairman of the town of Wheatland. September, 1999

Arthur Charles Sommers III, P.E., Baxter and Woodman. September, 1999

Elizabeth Spencer, WIDOT, Endangered Resources, June, 1999

William Stauber, Chief Land Use Planner, SEWRPC. July, 1999

Donna Walag, Conservation Of Our Lakes, Inc.

Ken Ward, Transportation Engineer at Rueckert and Milke, September, 1999

Wells, Martha, Chairman of the town of Bloomfield. October, 1999

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George Hall, Director
Municipal Boundary Review