
STATE OF WISCONSIN

CIRCUIT COURT

SHEBOYGAN COUNTY

In Re:

THE INCORPORATION OF THE TOWN
OF SHEBOYGAN, SHEBOYGAN COUNTY,
WISCONSIN AS THE VILLAGE OF
SHEBOYGAN

Case No. 97-CV-410

SANDRA L. GREGER, Representative of
the petitioners for the Incorporation of the
Village of Sheboygan,

Petitioners

and

CITY OF SHEBOYGAN,

Intervenors

DETERMINATION OF THE WISCONSIN DEPARTMENT OF ADMINISTRATION

February 14, 2000

INTRODUCTION

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

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

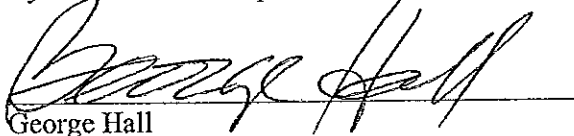
STANDARD 1 (a), Homogeneity and Compactness - not met
STANDARD 1 (b), Territory Beyond the Core - met
STANDARD 2 (a), Tax Revenue - met
STANDARD 2 (b), Level of Services - not met
STANDARD 2 (c), Impact on the Remainder of the Town - not applicable
STANDARD 2 (d), Impact on the Metropolitan Community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

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

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 14th day of February, 2000.

By the Wisconsin Department of Administration:



George Hall
Director of Municipal Boundary Review
Wisconsin Department of Administration



Mark Saunders
Deputy Counsel
Wisconsin Department of Administration

cc. Sandra R. Greger, Petitioners' Representative
Roger Ponath, Alternate Petitioner's Representative
Dan Hein, Chairman, Town of Sheboygan
Michael J. Bauer, Attorney for Petitioners and for the Town of Sheboygan
James Schramm, Mayor, City of Sheboygan
Stephen G. McLean, City Attorney, City of Sheboygan
Daun Lunde Bartzen, Clerk of Courts, Sheboygan County
F. Thomas Creeron, III, Assistant Attorney General, Wisconsin Department of Justice

The following analysis and findings relate to the “Standards to be applied by the Department of Administration,” found in §66.016, Wis. Stats.

Section 1(a) Homogeneity and Compactness

The standard to be applied is found in §66.016(1)(a) and is 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.

In addition to the statutory factors cited above, Pleasant Prairie v. Department of Local Affairs & Development,¹ also allows the Department to consider land-use patterns, population density, employment patterns, recreation and health care customs.² Thus, Pleasant Prairie gives the Department flexibility. However, this flexibility applies to consideration of additional non-enumerated factors rather than flexibility in elimination, removal or reduction of an enumerated factor.

The facts surrounding each incorporation petition are different. However, in each case and for each requirement, the Department must be able to state that, even though the situation presented may not be entirely perfect, *when taken as a whole*, the facts support a finding of homogeneity and compactness. Recent determinations of the Department (since the 1980’s) describe in detail the reasons for finding whether or not an incorporation criterion is met or not met.

The territory comprising the proposed village of Sheboygan is located along the Lake Michigan Shoreline, north of Chicago, IL, and south of Green Bay, WI. Map 1, at Appendix A, shows the area in relation to the Sheboygan County. The proposed village includes all of the area remaining within the town of Sheboygan, including parts of Sections 2-11, 16-21, and Sections 27-34. The Town contains 7,304 acres or approximately 11 square miles. United States Highway (USH) 43 extends north-south through the town, bisecting the town. It also marks the western extent of the city of Sheboygan. The city of Sheboygan borders the remaining town on the east and the south. The village of Kohler borders the town on the southwest. Remaining fragments of the town extend south along USH 43 between the city of Sheboygan and the village of Kohler, and along the northern border of the town of Wilson. The Town is also bordered on the west by the town of Sheboygan Falls. Rangeline Road marks the boundary between these towns. The town of Mosel is directly to the north of the town of Sheboygan. The boundary between these towns is marked by Playbird Road.

The town of Sheboygan has been rapidly urbanizing since the early 1990’s. Population grew from 3,866 residents at the time of the 1990 census to 5,114 residents by 1998, an increase of 32.3%.³ In contrast, the population of the city of Sheboygan has increased from 49,587 residents in 1990 to 51,050 in 1998, an increase of only 2.95%.⁴ The region’s population is expected to

¹ Pleasant Prairie v. Department of Local Affairs & Development, 108 Wis.2d 465 (Ct.App. 1982), affirmed, 113 Wis.2d 327 (1983).

² Ibid, at pg. 337.

³ Town of Sheboygan Exhibit T-7, which is based on 1990 census and preliminary estimates for 1998 by the State of Wisconsin, Department of Administration Demographic Services Center.

⁴ Ibid.

continue to grow. For example, the *Year 2020 Sheboygan Area Transportation Plan (SATP)* estimates that population in both the City and the Town will increase 5.5% between 1990 and 2020. This growth is likely due to the area's strong economy as well its quality of life. The Sheboygan area consistently ranks high in national surveys.⁵

Physical and Natural Boundaries

Topography

Map 2, at Appendix A, shows the topography and bedrock geology of the area. The topography throughout Sheboygan County tends to vary from level to rolling. The landscape is the result of bedrock configuration and glacial deposits, as well as stream erosion that formed the river drainage system. In general, the topography can be classified into three separate zones; the Lake Michigan Shore; the Central Till Plain (rolling and flat), and the Kettle Moraine (high and hilly). Elevations range from 600 feet above sea level along the coastline, to 1,200 feet above sea level in western portions of the county. The western part of the county has higher elevations because the underlying bedrock was tilted by glacial pressure. The Northeastern portion of the coastline is comprised of bluffs 40-50 feet high. Further south on the coast the bluffs retreat about ½ mile inland. The area between these bluffs and the sand dunes along the shoreline contains sandy muck soils, which are mostly suited for agriculture. The underlying bedrock in the proposed incorporated area is 710' thick, making it the thickest bedrock in Wisconsin.⁶ The uppermost bedrock consists of Niagara dolomite limestone. This layer is covered by a glacial drift classified as *unsorted till* which is deposited as ground and end moraines. The ground moraines consist primarily of clay and silt, as well as stratified sand and gravel layers. These areas store water for recharge into the bedrock as well as into rivers and wells. The end moraines, deposited in the western portion of the county in the Kettle Moraine area, consist primarily of low permeable till.

Drainage Basins

Map 3, at Appendix A, portrays the area drainage basins. Town of Sheboygan lands are primarily drained by three drainage basins, all of which empty into Lake Michigan. Northern portions of the Town just south of Playbird Road are drained by an "unnamed tributary". South of this area, lands drain into the Pigeon River. The Pigeon River drainage basin extends to lands roughly parallel to Kohler Memorial Drive. South of this area is the Sheboygan River drainage basin. It extends to lands roughly parallel to Union Avenue. The Town remnant to the south may drain to Fisherman's Creek as well as into the City's stormsewers. Other Town remnants within the City may also drain to City stormsewers.⁷

City of Sheboygan lands are drained by five drainage basins, all of which empty into Lake Michigan. Lands in the far north are drained by the "unnamed tributary". Lands immediately south of this drain to the Pigeon River. South of the Pigeon River basin, lands drain to the

⁵ Hearing testimony by the city of Sheboygan that *Readers Digest* magazine has ranked the City as the number one place in the United States to raise a family. *Money* magazine has ranked the City high the past five years in its "Best Places to Live" surveys. Also, a manufacturing trade magazine has ranked the City as 4th in the nation in job creation.

⁶ *Sheboygan County Comprehensive Outdoor Recreation and Open Space Plan* (1998) by Sheboygan County Planning and Resources Department, pg 19.

⁷ Personal communication with David Biebel, an engineer with the City of Sheboygan, 2/2/00.

Sheboygan River. South of this is the Fisherman's Creek drainage basin. City lands to the far south, adjacent to the town of Wilson, drain to the Black River.⁸

Physical boundaries

United States Highway (USH) 43 runs North-South through the Town, dividing the Town in half. It can only be crossed at three points in the Town: at County Road J, at Mueller Road, and at County Road O/Superior Avenue. Thus, USH 43 presents a substantial barrier to the connectivity of some Town areas. This lost connectivity is in regards to transportation and service delivery, and also in regards to psychological and social barriers. The Pigeon River also presents a natural barrier that separates the Town to the north and south of the river. Lake Michigan obviously presents a natural barrier for the Northeast part of the Town. The city of Sheboygan argues that the Chicago & Northwestern (C & N.W.) railroad line running north-south through the eastern part of the Town serves as a barrier to development and service provision for the Town.⁹ However, the City submitted no specific supporting evidence on this point.

Soils

Map 4, at Appendix A, shows the areas' soils. An examination into soils is important for a number of reasons. Soils determine the vegetation and wildlife. They determine how much rainfall or snow melt will flow directly into rivers, lakes and wetlands and how much will infiltrate into the ground. They also determine the feasible location of residential and commercial development. The area proposed for incorporation consists mainly of two soil types.

- a) Hebron-Mosel-Oakville – Deep, well to somewhat poorly drained loamy over clayey soils and sandy soils.
- b) Kewaunee-Waymor-Manawa - Deep, well to somewhat poorly drained, clayey or loamy soils.

The area adjacent to the Lake Michigan shoreline consists predominantly of the Hebron-Mosel-Oakville soil group, while the remainder of the area is of the Kewaunee-Waymor-Manawa soil group. The soil types found in the majority of the area have moderate water infiltration rates and moderate potential for runoff. These soils are moderately deep to deep and moderately drained to well drained. They tend to be suitable for development. On the other hand, soils adjacent to the Pigeon River and the Sheboygan river are characterized by very low infiltration rates and high runoff potential. This soil group includes clays with high swelling potential and soils with a permanent high water table. These soils are not suitable for development. Another unnamed hydrological soil group found in the area proposed for incorporation is characterized by moderately fine to fine textures. This soil type has higher runoff volumes when wetted. These soils are located mainly in a belt extending in a northeastern direction from USH 43 and Mueller Road, south of the Pigeon River and south of STH 23.¹⁰ Hearing testimony by Terry Johnson, an engineering consultant for the town of Sheboygan, suggested that soil conditions pose relatively few limitations for development within the Town.

⁸ Ibid.

⁹ Post-Hearing Brief of the City of Sheboygan, 9/3/1999, pg. 4.

¹⁰ A *Stormwater Management Plan* (1998) prepared for the City of Sheboygan and the Wisconsin Department of Natural Resources by Rust Environment & Infrastructure.

Critical Species

Information provided by the Wisconsin Department of Natural Resources - Bureau of Endangered Resources, indicates the presence of two endangered resources occurring within or near the boundaries of the proposed incorporated area:

1. *Aster Furcatus* (forked aster) - is listed as a plant species Threatened in Wisconsin and as a Federal Species of Concern. Observations of this species have been made in the floodplain terrace along the Sheboygan River.
2. *Sheboygan Campus Oak Woods Natural Area* – is located in part of the S1/2 SW1/4 of Section 28 in T15N R23E, Sheboygan County. This site is approximately 30 acres and contains a northern mesic forest natural community.

Two other species are listed in the historical records for this area (25 years old or older):

3. *Regina Septemvittata* (Queen Snake) – A species listed as Endangered in Wisconsin has been known to occur in the Sheboygan river. The last observation date for this occurrence was in 1967.
4. *Penstemon hirsutus* (hairy beardtongue) - A State Special Concern plant, has been observed to occur in section 21 of T15N R23E. This plant was observed in 1962.

Environmental Corridors, Wetlands and Natural Areas

Map 5, at Appendix A, shows environmental corridors. Most of the area's unique natural and environmentally significant features are associated with the region's rivers, creeks, shorelines and natural drainageways. For example, the *Kohler-Pigeon River Tract*, lying in Section 17 along the western boundary of the Town of Sheboygan is an area 44 acres in size and characterized by floodplain and ridges of second growth pine and hardwoods. The Kohler-Pigeon River Tract has been designated as a *Natural History Area* by the Wisconsin Department of Natural Resources (WDNR). A Natural History Area lacks an official state status but is important because it serves to reflect patterns of former vegetation or shows the influence of settlement on vegetation.¹¹

As can be seen by Map 5, buffers surrounding the Sheboygan River, the Pigeon River, the "unnamed tributary" north of the City, as well as the Lake Michigan Shoreline in the northern part of the Town and City are all classified as environmental corridors. In addition, a small environmental area runs from the northeast ¼ of Section 9 to the southwest ¼ of Section 3, between the unnamed tributary and the Pigeon River. According to the *2015 Sheboygan Urbanized Area Sewer Service Plan*, Town lands along the Pigeon River are classified as class 3 wildlife habitat and Class 1 fish habitat.¹²

In their brief, Petitioners say the following with regard to these natural areas:

Many of these features are found in corridors that are located along rivers, creeks, shorelines and natural drainage ways, and are essential to the maintenance of an ecological balance and diversity, and the preservation of the natural beauty of the area. The delineation of sensitive environmental areas plays an important role in the planning

¹¹ *2015 Sheboygan Urbanized Area Sewer Service Plan* (1997) by Bay-Lake Regional Planning Commission, pg. 50.

¹² *Ibid.*, pgs. 56-57.

process and assists in determining where future urban development should occur by the protection of these resources. The current unincorporated boundaries of the Town of Sheboygan located adjacent to the City of Sheboygan are vulnerable to potential poor planning and development if private property owners and/or developers negotiate development standards and development details between City and Town officials. Consequently, it is imperative that the Town's Petition for incorporation be granted so as to stabilize the existing town boundaries which will permit the Town and its consulting engineers to control and implement good planning and land use policies without the fear of annexation.¹³

Petitioners go on to note how these environmentally sensitive areas are also protected under the Sheboygan County Shoreland Zoning Ordinance and also under Wisconsin Department of Resources Administrative Rule (NR) 117. However, as to the Town's protection strategy for environmental corridors, none is provided. Instead, Petitioners argue that incorporation should be granted because annexation makes environmental protection difficult. However, nowhere in the brief or the hearing testimony or the exhibits do Petitioners specifically show their plan for the environmental corridors or how incorporation might prove compatible with their protection.

An examination of the Town's zoning map reveals some confusion. Maps by BayLake Regional Planning Commission and Sheboygan County showing environmental corridors indicate the presence of substantially more environmental corridors than does the Town Zoning Map. The Town Zoning Map was provided to the Department as Town Exhibit 11, while the County's Shoreland-Wetland-Floodplain map was provided as Town Exhibit 17. The confusion arises from the fact that the Town Zoning Map shows only two environmental corridors, along the Pigeon River and the Sheboygan River. Other corridors identified by both county and Bay-Lake along Lake Michigan, along the unnamed tributary, and along the Sheboygan River are absent from the zoning map. This absence may be significant because under Town zoning, the Pigeon River environmental corridors are protected by Conservancy District (C-1) zoning. According to the Town's code at section 6-11, only the following uses are permitted in a C-1 area:

- a. Stream bank and shore protection and preservation.
- b. Piers and docks.
- c. Removal of peat or topsoil.
- d. Special crop farming.
- e. Utilities such as telephone, telegraph, gas lines, and transmission lines.
- f. Nonresidential buildings used solely in conjunction with the raising of waterfowl, fish, and other lowland animals or crops.

Because not all of the Town's environmental corridors are included on the Town's zoning map as being under C-1 zoning, there is a question as to whether these areas will receive protection of C-1 zoning. Certainly these areas will receive protection under the County's Shoreland-Floodplain-Wetland Zoning Ordinance. However, the corridors could be much better served if both the County and Town codes were consistent.

¹³ Post-Hearing brief of the Petitioners 9/3/99, pg. 6.

Ambient Air Quality

Sheboygan County was classified as a *moderate non-attainment area* for ground-level ozone under the Clear Air Act Amendments of 1990 (CAAA). Sheboygan County was subsequently redesignated as a *maintenance* area in August of 1996. The CAAA requires a reduction in emissions of ozone precursors such as volatile organic compounds and nitrous oxides. The Wisconsin State Implementation Plan (SIP) for 1996 budgets only a two percent annual vehicle miles of travel (VMT) growth rate for Sheboygan County. Because of this, the county is not subject to any transportation control measures. However, it will need to stay within its *1996 Emissions Budget* and *Future Year Maintenance Plan Budget* based on current trends, as well as planned transportation projects and the transportation control measures included in the *Year 2020 SATP*.¹⁴

Petitioners have not provided the Department with any evidence as to how incorporation will improve air quality. In fact, the Town recently refused bus service from the City. Bus service in the Town could have had the effect of reducing area vehicle travel miles.¹⁵

Historical, Archaeological or Architecturally significant resources

Communication with the Division of Historic Preservation in the State Historical Society of Wisconsin indicates the presence of a number of architecturally and archaeologically significant resources within the area proposed for incorporation. Within the Town there are 11 structures that are listed on the state inventory of historically significant sites, including 9 houses, one dairy and one stone arch bridge. Of these sites, one house was determined not to be eligible for historic designation in 1994, and a house located at CTH Y north of CTH O, was placed on the National Register of Historic Places in 1988.

The State Historical Society also identified approximately 78 sites as being potentially significant sites for archaeology. None of these sites appear to have received formal historic designation. The majority of the sites represent the location of historic and prehistoric campsites/villages, as well as the sites of coastal shipwrecks. However, twenty-seven have been identified as historic or prehistoric Native and European burial sites that may be subject to the specific requirements of §157.70, Wis.Stats.¹⁶

The Town's ordinances contain no requirements regarding the identification or protection of historical, archaeological or architecturally significant resources and the Department has received no evidence of any existing planning or anticipated planning to identify and protect these resources.

¹⁴ *Year 2020 Sheboygan Area Transportation Plan (SATP)* (1996), pg. 117.

¹⁵ Letter to Steve Billings, manager of the Sheboygan Transit System from Gerald Sampson, Town of Sheboygan Chairman, May 12, 1998, informing the City that the Town is not interested in bus service.

¹⁶ Records were provided by Chip Brown III, State Compliance Coordinator, Division of Historic Preservation in the State Historical Society of Wisconsin. Information is also based on personal communication with Chip Brown on 2/2/00.

Transportation

Map 6, at Appendix A, shows the area's roads. The transportation facilities existing within the town consist mainly of corridors oriented in a north-south direction, local neighborhood and subdivision streets, and state trunk and county highways that connect with the city of Sheboygan and neighboring communities. The major surface transportation corridors within the Town territory include USH 43, State highway (STH) 42, County Highway (CTH) "LS", Superior Avenue, STH 23/Kohler Memorial Drive, Indiana Avenue, CTH J, and CTH Y. However, these roads are designed not so much to connect areas within the Town as they are to funnel traffic into the City. Like spokes on a bicycle wheel, the following roads converge into the city:

- *CTH LS;
- *SH 42;
- *CTH O/Superior Avenue;
- *STH 23/Kohler Memorial Drive;
- *Lower Falls Road/Indiana Avenue;
- *CTH A;
- *SH 28.

These corridors all provide direct access to the City of Sheboygan but provide poor connectivity between the various parts of the proposed incorporated area. The various subdivisions in the Town tend to be isolated and unconnected. This is particularly true in the subdivisions east of USH 43 and east of CTH LS.

Map 7, at Appendix A, submitted by the City as a hearing exhibit, shows all of the roads where both the Town and City share jurisdiction.¹⁷ The Town and City share jurisdiction on portions of Eisner Avenue, Main Avenue, Superior Avenue, Erie Avenue, Georgia Avenue, Union Avenue and Washington Avenue. The Department's visual inspection of these areas showed substantial problems. For example, these roads do not align well either vertically or horizontally. The grade tended to change sharply and lanes narrow suddenly. In addition, road shoulders and sidewalks disappear altogether in Town portions of the road only to reappear again in City-controlled portions. These problems are clearly evident to residents. The City testified at the hearing that both City and Town residents have complained about the roads, particularly Eisner Avenue. Eisner Avenue is heavily traveled and lined with schools and apartments and yet it has narrow lanes, steep stoped drainage ditches and no sidewalks.¹⁸ Students of Mann Middle School must walk up a blind hill on the shoulder of Georgia Avenue and cross Union Avenue in order to reach the school. Making the entire situation worse is the fact that the Town does not provide facilities allowing for alternative forms of transportation such as sidewalks, bike lanes or public transportation. As a result, cars, pedestrians, bikes, trucks, and rollerbladers are all forced out onto Georgia Avenue, making for a dangerous situation.

Two area plans are devoted to transportation. These plans are the *Year 2020 Sheboygan Area Transportation Plan* (SATP) (1996) and the *West Side Master Street Plan* (1991) by Donohue Environment & Infrastructure. Also, the City is preparing a *Transportation Element* as part of its

¹⁷ city of Sheboygan, Exhibit C-36.

¹⁸ The city of Sheboygan presented testimony at the public hearing on May 13 & 14, 1998 through a panel of City officials including; Tom Holman, City Engineer; Lloyd Turner, Public Works Director; Bob Peterson, Director of Development and Planning; and Brian Vandewalle, a planning consultant.

current comprehensive planning effort. Finally, the City prepared a *Northside Development Plan* in anticipation of future northward growth into the Town. This plan included current Town territory north to Playbird Road. The Town participated to some extent in the plan's preparation but declined to contribute financially. The plan consists of a map of future proposed land uses, including a proposed network of neighborhood and collector streets. It was never adopted by the City but is currently being incorporated into the City's comprehensive plan.¹⁹

The 2020 SATP recommends a number of improvements: Construction of an east-west collector road between Dairyland Road/N. 40th Street and CTH LS through the Town;²⁰ extension of transit service to portions of the Town along STH 42 where businesses and industry are located; installation of major bicycle facilities, including the addition of bike lanes on CTH LS, Erdman (CTH J), CTH Y, Playbird Road, Rangeline Road, and along Eisner Avenue and North 40th Street; and that a study of traffic circulation patterns be developed for sections of North Avenue and up to Playbird Road and west of CTH "LS" in order to address projected high traffic volumes along certain road segments. Maps 8 and 9, at Appendix A, show recommendations made for the study area in the SATP and Map 10, at Appendix A, illustrates current volume/capacity ratios.

The Town's *West Side Master Street Plan* (1991) was presented to the Department as exhibit T-12. This plan is not actually a plan. It is a map. There is no accompanying text to explain the map and there is no implementation program to carry out the map's vision. If implemented, the *West Side Master Street Plan* may mitigate some of the connectivity problems between subdivisions in the Town, but in turn creates another set of issues. The proposed streets are not aligned in a grid pattern to create a variety of travel options. Instead, the proposed streets feature curvilinear design and frequent cul-de-sacs that limit travel options. This is best illustrated in the fact that no bridge is proposed to cross the Pigeon River. Instead, traffic is made to empty onto either CTH Y, CTH O, or CTH J. As a result, at build-out, these county roads could become congested. The *West Side Master Street Plan* is also inconsistent with the *Rahn Park Plan* (1999). For example, the *West Side Master Street Plan* proposes street through Rahn Park, whereas the Plan does not show these streets. In addition, *the West Side Master Street Plan* envisions that west Birchwood avenue will be "vacated", while the *Rahn Park Plan* shows Birchwood Avenue as intersecting with N. 52nd Street.

In order to implement the provisions of these transportation plans, and also to improve the alignment between City and Town roads, a great deal of cooperation and coordination will be needed between the City and Town. However, such a coordinated effort appears to be lacking. This was evident from the Department's visual examination of the area. Also, the City testified at the hearing that the Town refuses to pay for road improvements. According to the City, the Town is cooperative and agreeable until cost is discussed, then it suddenly becomes disagreeable. The City asserts that it cannot make the improvements itself because much of the assessable property along the joint jurisdiction roads is within the Town, making improvement uneconomical for the City.²¹

¹⁹ Hearing testimony by the city of Sheboygan, 5/13/99 and interview with Bob Peterson, City of Sheboygan Director of Development, 1/27/00.

²⁰ According to Petitioner's Brief in Support of Incorporation, this recommended east-west collector road has been designed and is ½ complete.

²¹ Hearing testimony of the city of Sheboygan, 5/13/99.

Political Boundaries

Map 11, at Appendix A, shows the political boundaries of the city of Sheboygan and the town of Sheboygan. The area proposed for incorporation includes the entire town. The following description more precisely describes the boundaries of the area proposed for incorporation. The description breaks the Town into three main segments; the area west of USH 43, the area east of USH 43 and south of STH 23, and the area east of USH 43 and north of STH 23. Also, because protection from annexation is a major reason for Petitioner's desire to incorporate, this section will also provide a brief history of annexations from the Town to the City.

As noted in a previous section, the town of Sheboygan is contiguous to the north with the town of Mosel and to the west with the town of Sheboygan Falls. West of USH 43, the village of Kohler lies along the southern boundary of the Town. The city of Sheboygan lies along the east and southeastern borders of the Town east of USH 43. The northeastern boundary of the Town lies along the shore of Lake Michigan. The Town is bisected by USH 43 which runs north-south, and by State Highway 23 which runs east-west through the southern portion of the Town.

West of USH 43:

The northern boundary is the town line at Playbird Road. The western boundary extends south along Rangeline road. A strip of land, zoned agricultural, extends approximately one quarter (.25) miles wide extends south of STH 23 for approximately one-half (.5) miles. The southern boundary of the proposed village, between the proposed incorporated area and the village of Kohler, continues east just south of Superior Avenue. Town territory immediately south of Superior Avenue contains both residential and general business uses. A residentially zoned area extends south to highway 23 and then extends east to cross USH 43.

East of USH 43 and South of State Highway 23:

A narrow strip of town land extends south from the center of USH 43 and connects to highway related businesses and several residential subdivisions east of USH 43. This area contains a mix of residential areas and conservancy land that extends from the Chicago & N.W. railroad south across the Sheboygan river. A strip of town land extends east of Taylor Drive, behind the Taylor Heights Shopping Center. This strip is functionally isolated from the rest of the town and contains residences facing the shopping center and fronting Erie Avenue, a major City street.

A section of the Town lies adjacent to the University of Wisconsin territory just south of the Sheboygan River and east of USH 43. This Town territory extends east along both sides of Indiana Avenue and south of the Sheboygan River. The eastern portion of this area is a mix of older residential and business uses and the western portion of this area is agricultural land and is bisected by the Taylor Drive Corridor.

The Bollman farm area is located along Union Avenue and South Taylor Drive. It consists of the farm, a law office and one residence. A small area zoned agricultural is located just west of USH 43. A portion of USH 43, from Union Avenue south to CTH PP is included as Town territory. A strip that is mostly residential with one business parcel extends along the south side of Union Avenue and crosses Taylor Drive. The Bollman farm is south of this strip and is mostly East of Taylor Drive. This territory is completely surrounded by the City of Sheboygan or the village of

Kohler. Testimonial evidence by the City indicates that the Bollmans have a successful farming operation and intend to farm well into the future.²²

Another Town area that is physically isolated from the rest of the town is commonly identified as the “Lakeshore Display” area, after the name of a business located in the area. The Lakeshore Display area is located southeast of the intersection of Washington Avenue and South Business Drive. The territory contains both residential and industrial uses and is surrounded by the city of Sheboygan on three sides and the town of Wilson to the south. A landowner in this area wanted City water but did not want to annex. The landowner and the City reached a deal whereby the landowner received City water under the condition that he will annex to the City in 15 years. According to the City, this 15 year term will be up within the next year.²³ Incorporation may have the effect of undercutting this agreement. This issue will be discussed more in the Metro Impact section of this Determination.

East of USH 43 and North of State Highway 23:

The territory at the northeast corner of STH 23 and its intersection with USH 43 is part of the city of Sheboygan. Town territory extends along the south side of Superior Avenue from USH 43 to the southwest corner of the intersection of Superior Avenue and Taylor Drive (residential housing at this corner has been purchased recently for a strip mall or offices). A few residential parcels also remain on the north side of Superior Avenue, east of Taylor Drive. The Town Hall is located at the intersection of Superior and 40th Street, north of Superior Avenue. Town territory extends west from USH 43 to 40th Street and some parcels extend as far west as 36th street. Several Town residential and business properties are located along Main Avenue, including a section known as the “Cooks Corner” which contains a small tavern/restaurant. A narrow corridor has been maintained by later annexations to connect this parcel with the remainder of the town approximately 1/3 of a mile away. From the City’s perspective, Cooks Corner has been problematic. According to the City, a landowner’s well went bad several years ago and so he requested City water. The City extended water but then the landowner refused to annex. The City surrounds the parcel and other residents have requested City services, but because of the Town remnant, service provision is difficult. The City sidewalk stops when it hits Cooks Corners and the rest of the Town parcels and then resumes immediately thereafter.²⁴

The city of Sheboygan has acquired territory for two City parks (Maywood Park and Evergreen Park) along the Pigeon River. Maywood Park extends north across the Pigeon river and ends at Mueller Road. A parcel of City property zoned for business is located on the north side of Mueller Road. A strip of Town territory, that includes both residential and conservancy uses separates Maywood Park from Evergreen Park and extends as far south as Main Avenue. The two parks form part of a natural corridor along the Pigeon River. They are connected by a bridge across the Pigeon River. The northern edge of Evergreen Park lies along the Pigeon River and the park is bisected by STH 42.

The city of Sheboygan has annexed territory on the north side of the Pigeon River up to where Najacht Road crosses the Chicago and Northwestern railroad line. The boundaries between the Town and the City east of STH 42 are very irregular and confused. The Town territory in this area includes the Weiss Subdivision and the Tree Streets (so called because of the names of the streets: Elm, Oak, and Birch Tree Lanes) which are located just south of the Pigeon River

²² Ibid.

²³ Ibid.

²⁴ Ibid.

adjacent to Lake Michigan. The Weiss subdivision also connects by a narrow corridor to town territory north of Eisner Avenue and south of the Pigeon River, and to the Polar Ware property just east of the C & N.W. railroad and adjacent to North 15th Street. The southern end of the Polar Ware property is in the City and the plant is serviced by city water. The only access to the remainder of the town is north on CTH “LS”, through the City. The Polar Ware property is only connected to the rest of the Town territory by a corridor adjacent to the railroad line.

Annexations

Between 1992 and 1999, the city of Sheboygan annexed 171.68 acres from the Town with an assessed value of \$681,300.²⁵ The majority of this acreage was annexed in 1994 (82.59 acres) and 1995 (53.99 acres). In 1997, the last year for which the Town provided data, the City annexed a total of 6.49 acres with an assessed value of \$167,700.²⁶ To show the sequence of these annexations, the City has provided the Department with an annexation map.²⁷ The map shows annexations going back to 1950. Since 1980, the City has accepted several large annexations north of the Pigeon River, as well as a number of annexations from the southern portion of the Town, including territory along Erie Avenue and along Taylor Drive. In addition, the City annexed territory at the southeast corner of the intersection of USH 42 and State Highway 23, and between Taylor Drive and USH 43 north of Washington Avenue. However, despite this annexation activity, according to the map, the majority of Town territory was annexed to the City before 1980. One town resident portrayed the City as a “sleeping lion”, gobbling up Town land.”²⁸ However, in reality annexation has been occurring regularly since 1950, and in fact, has even slowed in the last 10 years.

To summarize this section, the City identifies eight separate areas of Town territory now within the City that form peninsulas and islands. The City asserts that if incorporation occurs, these areas would become permanently fixed. These peninsula and island areas include the following:

- 1) the Weiss Subdivision and the “Tree Streets” area;
- 2) the Polar Ware property and the area between the Pigeon River and Eisner Avenue;
- 3) the “Cooks Corners Area”;
- 4) the area around Superior Avenue and Taylor Drive;
- 5) the remaining strip behind Taylor Heights Shopping Center;
- 6) Indiana Avenue south of the Sheboygan River;
- 7) the Bollman Farm area, and
- 8) the Lakeshore Display area.

The irregular boundaries of the proposed territory create Town peninsulas and islands that are physically or functionally isolated from the remainder of the town.

²⁵ Town Exhibit T-6.

²⁶ Ibid.

²⁷ City of Sheboygan Exhibit C-26.

²⁸ Hearing testimony by James Schwimm, Town of Sheboygan resident, 5/13/99.

Schools

Map 12, at Appendix A, shows the school district boundaries for the area. The area proposed for incorporation includes three different school districts. The Sheboygan School District serves the majority of the Town. The Kohler School District includes a small area in the southwest portion of the Town, and the Sheboygan Falls School District includes a strip of territory along the western boundary of the Town.

Eight students from the Town currently attend schools in the Sheboygan Falls School District. However, a new subdivision is being built on the Town's western border and this will no doubt increase this number.²⁹

The Kohler School District was unable to determine whether any students from the town of Sheboygan were enrolled in the district. However, fifty-three students are enrolled from outside the district as part of the School Choice Program and some of these may be from the Town.

A total of 778 Town students attend schools in the Sheboygan Area School District. They attend the following schools and in the following numbers:³⁰

Elementary Schools: Cooper – 1
Early Learning Center – 24
Grant – 3
Lincoln Erdman – 187
Madison – 23
Pigeon River – 61
Washington – 3

Middle Schools: Horace Mann – 153
Urban – 41

High Schools: North – 258
South - 24

In addition, the City contains two parochial high schools and 10 parochial elementary schools.³¹ There is a strong possibility that some Town students could go to these schools as well. Of all of the public schools, only Lincoln-Erdman Elementary is located within the Town. Lincoln-Erdman is located on CTH "J" and is served by town sewer and water.

The Town gives some importance to the fact that Lincoln-Erdman is located within the Town. While it is true that most Town students of elementary school age attend Lincoln-Erdman, it is also true that after elementary school they must attend middle school and high school in the City or in a surrounding municipality. There are no middle schools or high schools in the Town and none are anticipated. Lincoln-Erdman is currently at 100% capacity and at some point in the future expansion may become necessary.³² However, no planning for expansion has occurred.

²⁹ Personal communication with Robert Englander, Business Manager - Sheboygan Falls School District, 1/10/2000.

³⁰ Letter to the Department from Debbie Lauersdorf, Census Secretary for the Sheboygan Area School District, 1/25/00.

³¹ Hearing testimony of the City of Sheboygan, 5/13/99.

³² Hearing testimony of Martha Steinbrucher, Principal of Lincoln-Erdman School, 5/13/99.

Boundaries of municipal governments do not affect nor are they affected by school district boundaries. The determination of their boundaries and school board issues are presently entirely separate from the process of municipal governance. However, as the Department noted in its Determination in Pewaukee (1991), schools nonetheless have an impact in molding community allegiance through scholastic, social, and recreational activities.

Waste Treatment and Water Supply District

The proposed area for incorporation is served by two special purpose districts. Sanitary District No.2 was formed to provide sanitary sewer service and is part of a regional system with a regional waste treatment plant that is located in the City. The boundaries are substantially the same as those of the Town, however, the district also includes a small part of the town of Sheboygan Falls.

Sanitary District No.3 provides water service within the Town. This district currently manages two water towers with a combined 500,000 gallon capacity and two wells. The boundaries of Sanitary District No. 3 are contiguous with those of the town.

Further Discussion of both of these special purpose districts occurs later in the Services Section of this Determination

Shopping and Social Customs

Many of the employment opportunities for Town residents, as well as shopping needs, and social and recreational opportunities are actually met by the City and surrounding communities. The Town appears to be missing many elements of a self-sustaining and internally oriented community. For example, missing are public recreational facilities, meeting spaces, and general community-wide activities, all of which tend to foster an independent community identity. In contrast, the City of Sheboygan supports and maintains a variety of regional facilities, including the Kohler Arts Center, a children's museum, Mead Public Library, 32 public parks totaling 663 acres, beaches, a recreational trail system, and a marina. These facilities are used by residents of communities throughout the region, including those from the town of Sheboygan. Because the Town does not have social or recreational opportunities, and the City does, social customs of town residents likely orient towards the city of Sheboygan. At the hearing, one Town resident admitted as much, testifying that his wife served as a "taxi driver" for the family, taking kids to school and recreational opportunities in the City.³³

The following paragraphs discuss shopping and social customs in more detail.

The Town's primary commercial areas are near the town hall, in the Town business park, and along STH 42, CTH J, and North 40th Street. The following is a list of businesses submitted by the Town to the Department. These businesses are organized according to their location within the Town.

State Highway 42 Corridor

Fiberspec, Inc.;
Koenig Machine;

³³ Hearing testimony by James Schwimm, Town of Sheboygan resident, 5/13/99.

Franzen Litho Screen, Inc.;
Free Enterprises;
Professional Supply;
Miesfeld Triangle Market, Inc.
Joch's Citgo Oasis;
Cousin's Submarine Sandwich Shop;
Manitou Girl Scouts Office;
Hardee's Fast Food Restaurant;
Highway Bakery;
Big Wheel Skate Center;
First Interstate Gas Station;
Pomp's tire Service;
Super 8 Car Wash;
Fale's Furniture Building;
RPM Speed and Custom;
Channel Communications;
Professional heating and Supply, Inc.;
Mac Tool Dealer.

Town of Sheboygan Business Park

Jurk Construction;
Butzen-durben Welding & Fabircating;
Automagic by Lockewood;
Muth Mirror Systems;
Drivers Leasing of Wis., Inc.;
Wisconsin Bearing Co.;
Ameritech;
Grand Rental Station;
B&F Precision Machining;
Sheboygan furniture & Carpet;

County Road J

Menards Home Improvement;
Jo-Ann Fabrics
Gander Mountain

North 40th Street

Comfort Inn
Earth Tech, Inc.
Aero-Metric, Inc.
Gabe's Construction, Inc.
Walzak Excavating, Inc.

Town Hall Area

Brantmeier Ford Dealership
Genuine Mechanics
Randall's Frozen Custard
Guske Petro Center/Liquor Store/Car Wash
Sheboygan County Job Center
Superior Lawn and Garden Center

Many of the businesses located in the Town appear to cater more to a regional market, or focus on travelers using USH 43. Market orientation appears to relate to particular sub areas of the

town. Petitioners themselves say that businesses along STH 42 tend to serve City residents.³⁴ While not required per se, many basic goods and services are not available in the Town (such as a full-service grocery store, pharmacy, bank, hospital or medical services). For these things, Town residents must go elsewhere. The above list of businesses tends to indicate that the links between the city of Sheboygan and the area proposed for incorporation could be as strong as the links within the area proposed for incorporation.

A mix of services and businesses that meet the daily needs of residents is a consideration in the incorporation of metropolitan villages. Certainly, services and businesses need not duplicate those of larger metropolitan communities. However, basic services should be available. In its Weston (1995) Determination, the Department found that Weston met basic needs and noted the following:

Much more than just convenience retail establishments are present in Weston, a characterization important for contributing to a separate identity for a community within a metropolitan area.

Regarding recreation, the Town does not operate a recreation program of its own. Instead, it participates in a program offered through the Sheboygan Area School District, for which it pays the district \$120,000 annually. Roughly 364 Town students from the Lincoln-Erdman school area and 358 students from the Pigeon River school area took part in various activities, including soccer, basketball, softball, and summer playground. In addition, 22 adult Town residents were enrolled in a fitness class held at Lincoln-Erdman. Adult fitness classes are also held at the Pigeon River school.

According to Petitioners, Lincoln –Erdman school itself also serves as a major social center for Town residents. The school is used as a meeting site for the Parent Teacher Organization, for Boy and Girl Scout troops, and for the various activities of the Sheboygan School District Recreation Department.³⁵

Neighborhood parks within safe walking or bicycling distance do not exist in the Town. Instead, yards serve as social and recreational facilities. The low density of development allows for large yards. Residents treasure their yards because of the space they afford for children to play. Instead of driving their children to parks, parents may simply let their children play in the yard.³⁶

In addition, the Pigeon River, the Sheboygan River and the Lake Michigan shoreline offer a variety of passive and active recreational opportunities, including boating, fishing and swimming, as well as a variety of land based activities such as waterfowl hunting, nature observation, hiking, skiing, etc. The *Sheboygan County Comprehensive Outdoor Recreation and Open Space Plan* (1998) lists 5 existing recreation facilities available to the residents of the town of Sheboygan; the 15-acre County owned Taylor Park, Lincoln-Erdman Elementary School (6.9 acres), the 63-acre private *Farmers and Sportsmens Conservation Club*, the 148-acre *Sheboygan Town and Country Golf Course*, and the 176-acre *Pine Hills Country Club*. However, it should be noted that Taylor Park is actually located within the city of Sheboygan, and the sportsmen’s club is actually private, as is one of the golf courses.

³⁴ Petitioner’s Reply Brief 9/17/99, pg. 2.

³⁵ Post-Hearing brief of the Petitioner, pg. 11.

³⁶ Hearing testimony by Ed Beeterwolf and Barbara Walters, Town residents, 5/13/99.

The *Sheboygan County Comprehensive Outdoor Recreation and Open Space Plan* found that the town of Sheboygan does not have enough parks, noting the following:

...urban growth and development has been particularly rapid in the Northeast Quadrant... most notably residential development in the Town of Sheboygan. This rapid growth at the urban fringe of Sheboygan has not been accompanied by all of the facilities and services needed by the new residents. Among those most notably lacking are parks and outdoor recreational facilities. The demand is urgent, and promises to grow. Particularly in the rapidly urbanizing Town of Sheboygan, at least one major community park featuring a variety of active and passive recreational facilities for all seasons and age groups is warranted.³⁷

Perhaps spurred on by this finding, the Town is in the process of developing a park to be called *Rahn Park*. It concluded the purchase of 33 undeveloped acres for the park in October, 1999. The park is expected to include a baseball diamond, a soccer field, playground equipment, a trail system, volleyball, picnic areas, and a park shelter or community building.³⁸ The Town also has a rest stop along the *Old Plank Road Trail*, which is a county biking/walking/running trail. The Town contributed financially towards the planning and maintenance of this trailhead park.³⁹

The petitioners also offer, as evidence of the sense of community among Town residents, the Women's Volunteer Fire Department Auxiliary. This organization raises funds to support the volunteer fire department by sponsoring such events as an annual "Brat Fry" and rummage sales.⁴⁰ Also adding to community identity is the "Talk of the Town", a quarterly newsletter the Town has published since 1991.

Regarding other organizations, clubs or community-wide events, Petitioners have not provided the Department with any information, despite this information being specifically requested. Typically, a petitioning town will provide the Department with lists of organizations along with descriptions of memberships and activities. The existence of local organizations often demonstrate an internal sense of community within the proposed incorporated area.

Churches

Testimony provided at the hearing indicated that there are four active churches within the Town. However, despite a request from the Department, Petitioners have not provided sufficient information for the Department to determine the size of the congregations, where parishioners live, what community activities or organizations may be sponsored by these churches, and who may use church facilities. Because of this lack of information, the Department is unable to conclude what contributions these institutions may make to the community identity of the area proposed for incorporation.

³⁷ *Sheboygan County Comprehensive Outdoor Recreation and Open Space Plan* (1998) by Sheboygan County Planning and Resources Department, pg. 224.

³⁸ *Ibid.*, pg 225

³⁹ Testimony of Sandra Gregor, Town of Sheboygan Administrator May 13 & 14, 1998.

⁴⁰ Testimony of Char Gumm, President of the Women's Fire Department Auxillary.

Summary of Current Land Uses

Map 13, at Appendix A, illustrates the distribution of land uses within the urbanized sewer service area, including both the city of Sheboygan and the area proposed for incorporation. This map demonstrates that most of the development in the Town is focused on the eastern edge along the USH 43 and STH 42 corridors, and estate residential development along the Lake Michigan shoreline. On the other hand, the western and northwestern parts of the Town are lightly developed, consisting largely of agricultural and raw land

Tables 1 and 2 show the land uses for the city of Sheboygan and the town of Sheboygan.

Table 1: City of Sheboygan Land Use Summary

	Number of Acres	Percent of Land Use
Residential	3,170	36.9
Commercial	292	3.4
Industrial	462	5.4
Transportation	1,614	18.8
Communications/ Utilities	94	1.0
Institutional/ Governmental	276	3.2
Outdoor Recreation	563	6.5
Agriculture/ Silviculture	1,416	16.5
Natural Areas	686	7.9
Total Acres	8,577	100.0

*from Baylake Regional Planning Commission, 1995

Table 2: Town of Sheboygan Land Use Summary

Land Use	Number of Acres	Percent of Land Use
Residential	1,045	14.3
Commercial	62	0.9
Industrial	88	1.2
Transportation	538	7.3
Communications/ Utilities	3	0.0
Institutional/ Government	48	0.6
Outdoor Recreation	468	6.4
Agriculture/ Silviculture	4,032	55.2
Natural Areas	1,020	13.9
Total Acres	7,304	100.0

*Bay Lake Regional Planning Commission, 1995

Table 2 shows that the Town is still largely undeveloped, with natural areas and agriculture/silviculture areas accounting for 69% percent of the Town's land use. Residential, commercial and industrial uses account for only 16%. Comparing the tables, it is clear that the Town is much less urban than the City. Population density is also an indicator of urban character. In 1995, persons-per-developed-acre in the Town was 1.72, as compared to 7.66 for the City.⁴¹

However, the Town's rural lands are rapidly being converted to residential use. This development is facilitated by the availability of both sewer and water, by the fact that most of the soils are buildable, and also by the fact that none of the Town's remaining agricultural land is designated as exclusively agricultural under the *Sheboygan County Farmland Preservation Plan* (1985).⁴² In fact, hearing testimony revealed that only a few farms remain active in the Town.⁴³

According to Petitioners, growth in the Town is so substantial that it accounted for almost 20% of all residential building in Sheboygan County from 1991 to 1998. The Town's equalized value has been growing by at least \$20,000,000 per year since 1994. The Town's equalized value and growth surpasses all Sheboygan County towns. Population has grown by 32% between 1990 to 1998, from 1,248 to 5,114, exceeding population projections in both the *Year 2020 Sheboygan Area Transportation Plan (SATP)* (1996) and the *2015 Sheboygan Urbanized Area Sewer Service Plan* (1998). In addition, between 1991 and 1999, 570 residential permits were granted.

Petitioners also offered testimony regarding future development in the town, including the potential development of approximately 70 acres of agricultural land located west of USH 43 and STH 42, known as the *Worminghaus property*. The land is currently under contract to a developer and may be developed as a *Home Depot* and a *Target* retail store. Property immediately north and northeast of the Worminghaus property is also zoned for business development and is currently for sale.⁴⁴

Residential land use in the Town is different than in the City. According to Petitioners, the minimum required lot size in the Town is 15,000 square feet.⁴⁵ Lot sizes may be larger than this but not smaller. In contrast, parcel sizes in the City are much more variable. The zoning code allows a variety of lot sizes and a variety of housing types. Also, because the City has limited amounts of vacant land, compared to the Town, it does more infill and redevelopment housing.⁴⁶

A number of plans exist that influence land use in both the City and Town. They include the *2015 Sheboygan Urbanized Area Sewer Service Plan* (1998), the *Year 2020 Sheboygan Area Transportation Plan (SATP)*(1996), the *Stormwater Management Plan* (1996), the *Harbor Centre Master Plan – Phase II* (?), the *Northside Neighborhood Plan* (1996), a *Sanitary Sewer Study for the Town of Sheboygan Sanitary Sewer District No.2* (1998), the *West Side Master Street Plan* (1991), and a *Comprehensive Plan for Water System Improvements for the Town of Sheboygan Sanitary district No. 3 – Water* (1992). These plans will be discussed in much more detail in the Services section of this Determination.

⁴¹ *2015 Sheboygan Urbanized Area Sewer Service Plan* (1998) by Bay-Lake Regional Planning Commission, pg. 74.

⁴² *Ibid.*, pgs. 28-31.

⁴³ Hearing testimony of Jim Worminghaus, farmer in the Town of Sheboygan, 5/13/99.

⁴⁴ Hearing testimony of the Town of Sheboygan, 5/13/99.

⁴⁵ Post-Hearing Brief of the Petitioner, pg. 3.

⁴⁶ Hearing testimony of the City of Sheboygan, 5/13/99.

Determination

The proposed area for incorporation lacks sufficient compactness and homogeneity. In fact, the transportation, shopping and social customs, and land use patterns make the Town territory east of USH 43 more homogeneous with the city of Sheboygan than with the rest of the Town.

The pattern of development in the area proposed for incorporation is frequently more related to development within the City than it is to the remainder of Town, such as commercial development along STH 42 and on Superior Avenue near the Town Hall. In contrast, estate-residential lying along the Lake Michigan shoreline has more in common with the far western edge of the town, insofar as much of the territory west of CTH Y remains agricultural. Incorporation of the current boundaries would likely result in a continuation of the current pattern of scattered development types, and disparity of density and population within the proposed incorporated area. This pattern of development was rejected by the court in Scharping v. Johnson.⁴⁷ The court in Sharping upheld the Department's finding that the area outside the core was largely rural and therefore not compact. The court says:

There is evidence in the record showing considerable disparity in the population of the sections within the proposed incorporation. The disparity of population ranges from 298 to 29. We conclude that the requirement of homogeneity is not met because of this diversity.”⁴⁸

The boundaries for the proposed incorporation are very irregular and complex. In as many as eight distinct places, Town lands form peninsulas or islands that extend into, or are surrounded by, the City. These Town remnants are physically isolated from the principal part of the Town. In many cases, one must travel through the City to reach them. The irregular boundaries create difficulties for area residents and visitors because the Town provides different services than does the City. A consequence of contrasting development and transportation policies results in the transition between Town and City lands being distinct and very noticeable. For example, sidewalks and curbs suddenly end only to resume again several hundred yards later. Roads narrow and then widen, and center lines, roadway elevations, and lane widths vary considerably. As will be described in the Services section of this Determination, the irregular boundaries cause confusion over service delivery, because both residents and municipal employees are uncertain as to which lands are under City jurisdiction and which are under Town jurisdiction.

The boundaries of a proposed area for incorporation are an important factor in determining compactness. This was made clear in Scharping v. Johnson, where the court said:

In view of legislative concern over attenuated annexations and gerrymandered “shoestring” shaped districts, we conceive that the requirement of “compactness” is addressed primarily to the regularity of the shape of the proposed [incorporation].⁴⁹

Petitioners argue that the irregularity of the boundaries should not be held against them because they are the result of annexation. They argue that since the city of Sheboygan has control over whether to accept annexation petitions, any boundary irregularity must be attributed to the City

⁴⁷ Scharping v. Johnson, 32 Wis.2d 383 (1966).

⁴⁸ *Ibid.*, at pg. 392.

⁴⁹ *Ibid.*, at pg. 392.

and not the Town. This argument was made in both Incorporation of Town of Pewaukee⁵⁰ and Pleasant Prairie v. Johnson.⁵¹ However, in neither case was the court convinced by this argument.

It should also be noted that the entire town of Sheboygan need not have been included in the area petitioned for incorporation. Instead of proposing boundaries with peninsula and island remnants, Petitioners could have chosen more compact boundaries. On December 28, 1999, Petitioners published notice of an intent to petition for incorporation again, despite the fact that their current petition had not yet been resolved by the Department. This new incorporation petition proposes different boundaries, however, these new boundaries only partially address the problem of Town peninsula and island remnants.

The petitioners seek to argue that there is a need for incorporation because of the rapidly urbanizing character of the Town. However, as the previous discussion of land use and transportation patterns show, much of this development is unrelated to each other and is occurring in isolated pockets, creating a haphazard pattern of “sprawl” in the Town. This is contrary to the legislative intent of §66.016, Stats. The Circuit court addressed the intent of the drafters of this section in its Pleasant Prairie Decision:

The requirement of “reasonable homogeneity” shows a legislative concern that the area to be incorporated have a reasonably consistent and uniform composition. The standards set forth in sec. 66.016(1), Stats., indicate that the entire area be a community, that it have common interests that are internally shared. ... [W]e conclude that the department, in its court of appeals’ brief, appropriately characterized the requirement of homogeneity when it said that requirement: ‘...seek[s] to assure that an incorporated area is urban rather than rural, that development in such an area is not scattered, fragmented, or haphazard, and that similar land uses are grouped together in appropriate municipal boundaries.’⁵²

The Petitioners for the town of Sheboygan argue that “homogeneity” does not mean that all land and development must be uniform and of similar character and design. While the Department agrees with this, the Pleasant Prairie case supports the Department’s long standing policy to consider the relationship (or lack thereof) between various land uses as an element of homogeneity. The court wrote:

Hence, it appears that homogeneity has a meaning apart and in addition to the factors listed, and it furthers the legislative purpose to allow the department to consider aspects of development which tend to show homogeneity or lack thereof in respect to land-use patterns – whether urban or not. Certainly, by definition, patterns of development which show that an area has widely scattered areas of residential and industrial development and intervening areas of extensive rural uses indicate that the area is not homogeneous. That is not to say that incorporated areas should not have mixed land uses or that there should not be extensive greenbelt or wetland reservations, but the various developments should be grouped in rational ways and not be scattered “haphazardly” across undeveloped areas.⁵³

⁵⁰ Incorporation of Town of Pewaukee, 186 Wis.2d 515 (1994).

⁵¹ Pleasant Prairie v. Johnson, 34 Wis.2d 8 (1966).

⁵² Pleasant Prairie v. Local Affairs Dept., 113 Wis.2d 327, 333 (1983).

⁵³ Ibid., at pg. 337.

The court also held that the relationship between land uses is particularly relevant in metropolitan incorporations and stated that; "... it would appear that the extensive and haphazard interspersal of rural areas is more relevant to a finding of a lack of homogeneity in a metropolitan-type incorporation than where the incorporation sought is that of an isolated village."⁵⁴

The territory proposed for incorporation lacks homogeneity because of its system of roads. Roads in the area are designed to provide connectivity between the city of Sheboygan and outlying areas more than they are designed to connect areas within the Town. Just like spokes on a bicycle wheel leading inwards towards the hub, the major roads in the Sheboygan area all lead into the City. Not only do the major roads not facilitate travel within the Town, but Town roads themselves do not permit good access or connectivity within the Town. Travel options are limited to major county roads. Many of the Town roads dead end. As a result, subdivision developments are left isolated and unconnected and the only means of reaching them is by traveling on a county trunk highway. The *Town's West Side Master Street Plan* (1991) proposed construction of additional roads, however, these proposed roads still do not connect the Town as a whole. They offer more travel options within subdivisions but do not connect subdivisions or the Town. This is due to the fact that the proposed roads are laid in a curvilinear, cul-de-sac fashion. The number of travel routes are still limited and travelers are funneled onto CTH Y, CTH J, or CTH O. These roads will surely become congested upon build-out of Town areas and dangerous for pedestrians or bicyclists. The West Side Master Street Plan fails in connecting Town areas and in suggesting an urban level transportation system. Perhaps the best illustration of this is the fact that no bridges are proposed to cross the Pigeon River. This means that to visit neighbors across the river, Town residents will either have to swim or drive two miles north or south to either CTH J or CTH O and then north or south on CTH Y.

Also important to a lack of homogeneity is the fact that many areas within the territory proposed for incorporation are only accessible by traveling on City roads. This tends to show a lack of independence. It also raises equity issues because Town residents obviously do not pay for the City roads on which they use and rely. This was a factor in the Department's Brookfield (1999) decision, where the Department noted that in order to reach some town areas it is necessary to traverse city of Brookfield streets and county trunk highways.

Another factor showing a lack of homogeneity is the fact that the Town is cut in half by USH 43. Because only three points exist at which to cross this major highway, the Town is severed socially, psychologically, and in regards to transportation and service delivery.

Regarding social and recreational customs, it is difficult to determine that Town residents living throughout the territory share a sense of cohesion or identity. The residential development in the Town tends to occur in unrelated and isolated subdivisions. It is haphazard "sprawl" in the sense that it is unplanned and lacks a community purpose, or unifying intent. Recreation tends to occur individually and privately on yards made possible by large residential lots. There are no parks in the Town. Regarding community organizations, Petitioners have not provided the Department with any information other than the fire department's "brat fry" and the Ladies Auxiliary rummage sales.

In Pleasant Prairie v. Johnson the court found that the existence of a uniform school district is a characteristic of homogeneity. While the Town contains parts of three school districts, a majority of the students in the Town of Sheboygan attend the Sheboygan School District. Petitioners

⁵⁴ Ibid., pg. 337.

contend that Lincoln-Erdman Elementary, located in the Town, contributes to a sense of social unity in the area proposed for incorporation. Students from the Town attend Lincoln-Erdman, as well as public and private elementary schools in the city of Sheboygan, and elementary schools in the Kohler School District and the Sheboygan Falls School District. Since there are no middle schools or high schools in the town of Sheboygan, most of the students in the town of Sheboygan attend one of the Schools in the City of Sheboygan. The Sheboygan School District also offers an extensive Community Recreation Program for both students and adults, and these programs are open to residents of the town of Sheboygan. In Pleasant Prairie v. Johnson, the court found that the existence of a uniform school district is a characteristic of homogeneity. However, in this case, the social and recreational homogeneity *between* the Town and the City of Sheboygan is strengthened by the school district. . . .

Therefore, for the aforementioned reasons, this criterion is determined not to be met.

Section 1(b), Territory Beyond the Core

The standard to be applied is found in §66.016(1)(b) and is as follows:

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

This standard is comprised of two parts. The first part pertains only to “isolated” villages or cities, and permits one of two criteria to satisfy the standard: 30 housing units average per quarter section; or 25 percent or greater assessed value which is attributable to “existing or potential mercantile, manufacturing, or public utility uses.” The second part of section (1)(b) pertains to “metropolitan” villages or cities, and applies to this incorporation. The second part of section (1)(b) asks that the territory petitioned for incorporation have the “potential for residential or other land use development on a substantial scale” within the next three years. The department may waive these requirements to the extent that water, terrain or geography prevents such development.

Although identification is not necessary, the most densely populated square mile of the territory proposed for incorporation, as specified in §66.015(3), is identified in the post-hearing brief by the city of Sheboygan as being the area bounded on the south by Mueller Road, on the west by CTH “Y”, on the east by North 40th Street extended, and on the north by Bender Road extended.⁵⁵ This area includes predominantly residential subdivisions, with businesses along the USH 43.

Petitioners argue that, with the exception of conservancy land along the Pigeon River, Sheboygan River and associated tributaries, the majority of the remaining undeveloped territory has the potential for development within 3 years. They assert that the majority of the soils in the territory are classified as buildable and that the sewer and water service districts are capable of providing

⁵⁵ Post-Hearing Brief of the City of Sheboygan, pg. 10.

service to the remainder of the Town. The Department also notes that, according to the Bay Lakes Regional Planning Commission, none of the remaining agricultural land in the Town is designated as exclusive agricultural land under the *Sheboygan County Farmland Preservation Plan* (1985).⁵⁶

The Bay-Lake Regional Planning Commission estimated that the persons per developed acre in the town of Sheboygan was 1.72 while the persons per developed acre in the City of Sheboygan was 7.66. However, exhibits submitted by petitioners and shown in Table 3 below document substantial residential and commercial/industrial growth in the Town since 1990.

Table 3: TOWN BUILDING PERMIT INFORMATION SINCE 1990⁵⁷:

YEAR	BUILDING PERMITS –NEW COMMERCIAL/INDUSTRIAL	BUILDING PERMITS FOR COMMERCIAL ADDITIONS	RESIDENTIAL BUILDING PERMITS ISSUED
1991	2	1	52
1992	3	1	52
1993	4	1	67
1994	7	0	70
1995	2	0	86
1996	5	5	85
1997	5	4	70
1998	2	1	88
1999	1	N/A	N/A
Totals	31	13	570

Petitioners also offered testimony regarding potential future development in the town, including the potential development of approximately 70 acres of agricultural land located west of USH 43 and STH 42, known as the *Worminghaus property*. This land is currently under contract to a developer and may be developed as a *Home Depot* and a *Target* retail store. Property immediately north and northeast of the *Worminghaus property* is currently zoned for business development and is on the market for sale. Existing platted subdivisions west of CTH Y suggest that future land use patterns are well-established and that a conversion from agriculture to developed uses is occurring.

⁵⁶ 2015 *Sheboygan Area Urbanized Sewer Service Plan* (1997), pp. 28-31.

⁵⁷ Sources: Town of Sheboygan Building Permits Issued for New Commercial/Industrial Construction (Town Exhibit T-9), Town of Sheboygan Selected List of Building Permits Issued: Commercial Additions (Exhibit T-4), Town of Sheboygan Residential Building Permits Issued in Comparison to Sheboygan County Totals (Town Exhibit T-8).

Determination

The exhibits, testimony, and documents collected by the Department demonstrate that the Town has the ability to develop most of the currently undeveloped territory to appropriate urban densities with public sewer and water. In fact, the city of Sheboygan stated that it “does appear that the area beyond this most densely populated square mile which has not already been developed has the potential for residential development on a substantial scale, particularly that area west of Interstate 43.”⁵⁸ Therefore the Department determines that the “potential for substantial development” tests is met, (despite the fact that 55% of the town that remains undeveloped (according to data from 1995).

Section 2(a) Tax Revenue

The standard to be applied is found in §66.016(2)(a), Wis. Stats., and is as follows:

The present and potential sources of tax revenue appear sufficient to defray the anticipated cost of governmental services at a local tax rate which compares favorably with the tax rate in a similar area for the same level of services.

Budget and Tax Comparisons

Budget and tax information is presented for not only the town of Sheboygan but also for the city of Sheboygan. This is due to the fact that the City presented a resolution indicating a willingness to annex the territory proposed for incorporation pursuant to §66.014(6), Wis. Stats.

Table 4, on page 28, shows the 1997 budgets of the Town and City.⁵⁹ Budgets are useful determinates of the type and level of services offered to residents.

Table 4 shows that spending priorities of the Town and city are different. The City spends a greater percentage than the Town for law enforcement (20% vs. 0%), parks and recreation (10% vs. 0%), culture and education (9% vs. 0%). The Town spends more on highway construction (32% vs. 9%), and conservation and development (33% vs. 7.4%). In fact, these two categories together account for 65% of all town expenditures, whereas they account for only 26% of the City’s budget. In 1997, the town of Sheboygan spent nothing on health and human services, culture and education, and parks and recreation. On the other hand, the city of Sheboygan spent about 20% (\$7,543,700) of its general operations and capital budget on these three categories. Using similar categories of general government, highway maintenance, fire, and solid waste and disposal for the Town and City, the following paragraphs describe these budget differences in more detail.

Regarding law enforcement, the town of Sheboygan receives police services from the Sheboygan County Sheriff as do 23 other municipalities in the county. The Sheriff’s Department responded to 20,220 calls in these 23 towns and villages.⁶⁰ The cumulative population estimate of these 23

⁵⁸ Post-Hearing Brief of the City of Sheboygan, pg. 10.

⁵⁹ County and Municipal Revenues and Expenditures 1997. Wisconsin Department of Revenue, Division of State and Local Finance. Bulletin No. 97, February 1997.

⁶⁰ Based on phone communication and written correspondence from Inspector Tim Grasse, Sheboygan County Sheriff’s Office.

communities is 43,188, or 38% of the total population of Sheboygan County. The cities of Sheboygan, Sheboygan Falls, and Plymouth and the villages of Elkhart Lake and Kohler do not rely on the county sheriff. However, they pay the same county tax levy that supports the Sheriff's Department budget. Although these three cities and two villages do use the county jail and intake services, overall they are subsidizing the police protection for the 23 other communities through their county tax levy. In fact, the three cities and two villages that do not use the Sheboygan County Sheriff have 56% of the full-equalized property value in Sheboygan County.⁶¹

Examining only those communities that receive service from the Sheboygan County Sheriff, the Department found that the town of Sheboygan represented 10% (2,060 of 20,220) of the Sheriff's calls in 1998. This is in close proportion to the population size of the town of Sheboygan, which has 11% of the population and 14% of the full-equalized value of those communities that use the County Sheriff (and 4% and 6% of the total county population and full-equalized value respectively).

In 1998, the total budget for the Sheboygan County Sheriff was \$10,353,376. Of this total, about \$3,000,000 is spent to operate the county jail, which is used by all municipalities in the county. It is the only jail in Sheboygan County. \$7,353,000 (\$10,353,376 minus \$3,000,000) is spent on patrol and patrol support services. The town of Sheboygan has 10% of the Sheriff's calls; it can be estimated that 10% of the patrol and patrol support services budget is devoted to the town of Sheboygan. In 1998, it can be estimated that \$735,300 was spent by the county for police service to the town of Sheboygan. Revenue for this service came from the Town as well as other municipalities in Sheboygan County. This explains why the town itself spends \$0 on law enforcement, whereas law enforcement is the largest single expenditure item for the City of Sheboygan.

The percentage of the total respective budgets spent on, health and human services, culture and education, and parks and recreation are significantly different. According to the Wisconsin Department of Revenue, the town of Sheboygan spent zero dollars on health and human services in 1997. The city of Sheboygan spent \$293,000 in these services, which represents 1% of their total expenditures. The Department of Revenue defines health and human service spending to include operating expenditures and capital outlays for health officers, health inspections, mental health programs, general relief, cemetery, humane shelter, institution care, social programs, aging and veterans programs.

Similarly, the town of Sheboygan expended zero dollars on parks and recreation in 1997, while 9.5 percent (\$3.6 million) of the city of Sheboygan's expenditures were for parks and recreation.⁶² Parks and recreation is defined as operating expenditures and capital outlays for parks and zoo; recreation programs; events such as summer picnics, holiday decorations, parades and festivals; recreation facilities such as ice areas, swimming pools, and baseball diamonds.

The Town spent zero dollars on culture and education activities, while 9.3% percent (\$3.5 million) of the City's expenditures are devoted to the category. The Wisconsin Department of Revenue defines the culture and education category to include operating expenditures and capital outlays for libraries, museums, theatre and other cultural activities, and handicapped schools operated by counties. Most of the City's culture and education spending is for the Mead Public

⁶¹ *1998 Town, Village, and City Taxes*. Wisconsin Department of Revenue.

⁶² The Department is aware that the town is currently planning for a new park; however, we used 1997 expenditures because these are the latest numbers that the Wisconsin Department of Revenue has published.

TABLE 4
Expenditures and Revenues

Revenues--Governmental Fund	TOWN OF SHEBOYGAN 97			CITY OF SHEBOYGAN 97		
	DOLLARS	PERCENT	\$/CAPITA	DOLLARS	PERCENT	\$/CAPITA
Taxes						
General Property Taxes	486,700	15.3%	78.5	14,675,700	29.0%	396.9
Tax Increments	-	0.0%	-	1,773,100	3.5%	48.0
In Lieu of Taxes	-	0.0%	-	627,900	1.2%	17.0
Other Taxes	-	0.0%	-	632,100	1.2%	17.1
Total Taxes	486,700	15.3%	78.5	17,708,900	35.0%	479.0
Special Assessments	362,400	11.4%	58.4	717,300	1.4%	19.4
Intergovernmental Revenues						
Federal Aids	-	-	-	1,342,100	2.7%	36.3
State Shared Revenues	133,000	4.2%	21.4	12,310,800	24.3%	333.0
State Highway Aids	85,800	2.7%	13.8	1,803,300	3.6%	48.8
All Other State Aids	99,200	3.1%	16.0	775,000	1.5%	21.0
Other Local Government Aids	-	0.0%	-	389,900	0.8%	10.5
Total Intergovernmental Rev.	318,000	10.0%	51.3	16,621,200	32.8%	449.6
Licenses & Permits	93,800	3.0%	15.1	1,130,000	2.2%	30.6
Fines, Forfeits & Penalties	-	0.0%	-	677,600	1.3%	18.3
Public Chg. For Services	60,300	1.9%	9.7	1,262,800	2.5%	34.2
Interg. Chg. For Services	-	0.0%	-	232,800	0.5%	6.3
Miscellaneous Revenues						
Interest Income	68,100	2.1%	11.0	2,073,500	4.1%	56.1
Other Revenues	373,200	11.7%	60.2	1,223,800	2.4%	33.1
Total Miscellaneous	441,400	13.9%	71.2	3,297,400	6.5%	89.2
Subtotal--General Revenues	1,762,800	55.5%	284.3	41,648,300	82.3%	1,126.5
Other Financing Sources	1,414,600	44.5%	228.1	8,970,900	17.7%	242.6
Total Revenue & Other Financing Sources	3,177,400	100.0%	512.4	50,619,200	100.0%	1,369.1
Expenditures-Governmental Fund						
General Operations & Capital						
General Government	232,200	8.4%	37.4	3,407,000	8.8%	92.2
Law Enforcement	100	0.0%	0.0	7,751,500	20.1%	209.7
Fire	125,300	4.6%	20.2	5,269,300	13.7%	142.5
Ambulance	-	0.0%	-	-	0.0%	-
Other Public Safety	26,500	1.0%	4.3	412,100	1.1%	11.1
Highway Maintenance & Adm.	306,300	11.1%	49.4	3,670,100	9.5%	99.3
Highway Construction	887,400	32.3%	143.1	3,517,800	9.1%	95.1
Road-Related Facilities	6,800	0.2%	1.1	1,472,800	3.8%	39.8
Other Transportation	-	0.0%	-	9,200	0.0%	0.2
Solid Waste Coll & Disposal	255,800	9.3%	41.3	2,220,100	5.8%	60.0
Other Sanitation	-	0.0%	-	393,000	1.0%	10.6
Health & Human Services	-	0.0%	-	293,200	0.8%	7.9
Culture & Education	-	0.0%	-	3,583,300	9.3%	96.9
Parks & Recreation	-	0.0%	-	3,667,200	9.5%	99.2
Conservation & Development	907,400	33.0%	146.3	2,862,700	7.4%	77.4
All Other Expenditures	-	0.0%	-	-	0.0%	-
Subtotal--Oper. & Cap. Expend.	2,748,200	100.0%	443.2	38,529,800	100.0%	1,042.1
Debt Service						
Principal	351,600	-	56.7	4,786,500	-	129.5
Interest & Fiscal Chg.	189,100	-	30.5	2,108,200	-	57.0
Total Debt Service	540,700	-	87.2	6,894,800	-	186.5
Other Financing Uses	-	-	-	2,824,000	-	76.4
Total Expenditures & Other Financing Uses	3,288,900	-	530.4	48,248,700	-	1,305.0
Total General Obligation Debt	4,085,700	0.2%	658.9	44,540,200	2.5%	1,204.7
Full Equalized Value	286,718,900		283,540.3	1,758,233,400		7,755.0

Source: Wisconsin Department of Revenue, 1997 County and Municipal Revenues and Expenditures

Library. The City contributed \$2.4 million to the operation of the public library in 1997.⁶³ Total revenues for Mead Public Library were \$2,849,160.⁶⁴ The City's library payments are raised through the local property tax levy. The Department calculates that City residents paid \$1.40 per \$1000 to support library services. The town of Sheboygan financial chart shows no expenditure on libraries because the town pays for its library service through the county federated library tax levy, which contributes to the Eastern Shores Federated Library System. The levy for libraries is 0.34 per \$1,000.⁶⁵ Town of Sheboygan residents and businesses contributed approximately \$105,734 to the county federated library system. A city of Sheboygan homeowner with a property assessed at \$100,000 would pay \$140 per year to support the public library, whereas a town of Sheboygan homeowner with a home of the same assessed value would pay \$34 per year. This accounts for only 24% of what City residents pay for library service. Therefore, Town residents pay much less for library services than do City residents. The Services section of this Determination further discusses library services.

The town of Sheboygan spent a substantial proportion of its budget on development and conservation. Almost 33% of its general operations and capital expenditures, or \$907,400, were spent on this category (this figure has since been revised by the Department of Revenue to \$1,191,122). The city of Sheboygan spent \$2,862,700 on development and conservation, however, this is only 7.4% of the City's total general operations and capital expenditures.

Local Property Tax Rates

The Department examined and compared local property tax rates for thirteen Sheboygan County municipalities and 32 large towns statewide that were nearly similar in character to the town of Sheboygan. For the Sheboygan County analysis, the following municipalities were selected: the cities of Plymouth and Sheboygan Falls; the villages of Howards Grove, Kohler, Cedar Grove, and Oostburg, and the town of Wilson. The results of this comparison are shown in Table 5 on page 30. This table shows that the town of Sheboygan has a very low tax rate when compared to other municipalities in the county. Table 6, also on page 20, examines other Wisconsin towns similarly situated to the town of Sheboygan. All are situated next to a large city. This information is graphically conveyed in Figures 1-4 on pages 31-34. Both Table 6 and Figures 1-4 show that the town of Sheboygan not only has a low mill rate amongst municipalities in Sheboygan County, it has a low mill rate when compared to the rest of the state. In fact, the town's 1997 equalized local property tax rate of \$1.70 was fifth lowest among the selected large "urban" towns.

Town of Sheboygan residents and officials, however, can be very sensitive to local property tax hikes⁶⁶ and perhaps this is one explanation for its low mill rate. The types of services offered by a rural town and an urban village can be very different. Expenditures and tax rates are a good indication of the level and sophistication of services offered. The town of Sheboygan's small budget and low tax rate mirror that of a rural farming community. However, as discussed earlier in this determination, only a few active farmers remain in the town. The Town is undergoing a rapid transition away from being a rural community towards being an urban community. However, despite this, the Town's financial structure and expenditures remain similar to those of a farming community of 2,000 persons.

⁶³ Affidavit of Sharon Winkle, Library Director of Mead Public Library, City of Sheboygan. Exhibit C-6.

⁶⁴ Ibid.

⁶⁵ David Winkle, Director, Eastern Shores Federated Library System, per comm. February 9, 2000.

⁶⁶ Public Hearing testimony by petitioners, Town officials and Town residents.

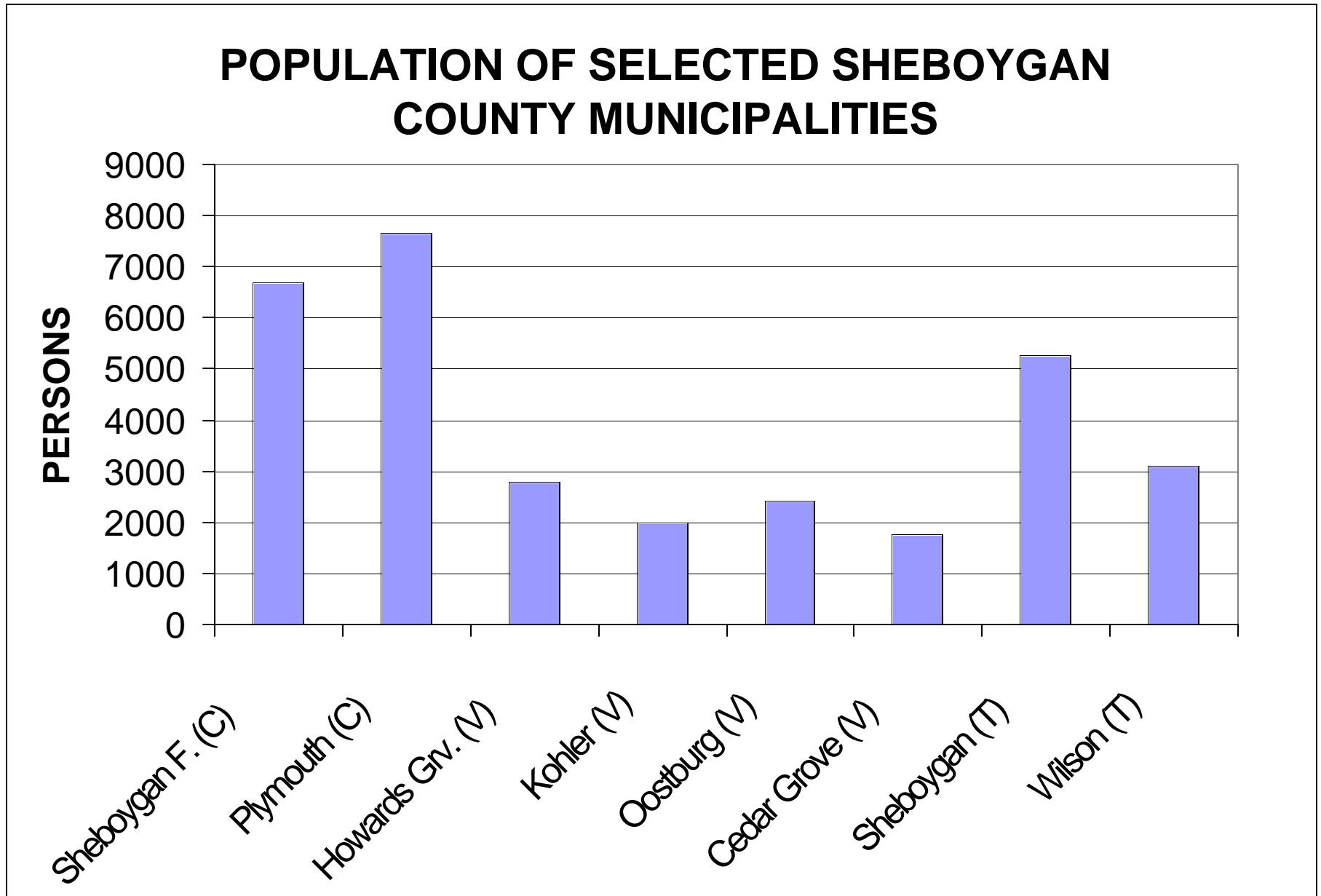
TABLE 5
COMPARATIVE LOCAL PROPERTY TAX RATES:
Selected Sheboygan County Municipalities

<u>Municipality</u>	<u>1997</u>
Sheboygan (C)	8.86
Sheboygan Falls (C)	3.73
Plymouth (C)	4.98
Howards Grove (V)	3.81
Kohler (V)	4.71
Oostburg (V)	5.54
Cedar Grove (V)	7.29
Lima (T)	0.75
Plymouth (T)	1.01
Rhine (T)	1.35
Sheboygan (T)	1.89
Holland (T)	2.23
Wilson (T)	2.42

TABLE 6
COMPARATIVE LOCAL PROPERTY TAX RATES:
Selected Wisconsin Towns of Similar Population
and Gerographical Proximity to a Large City

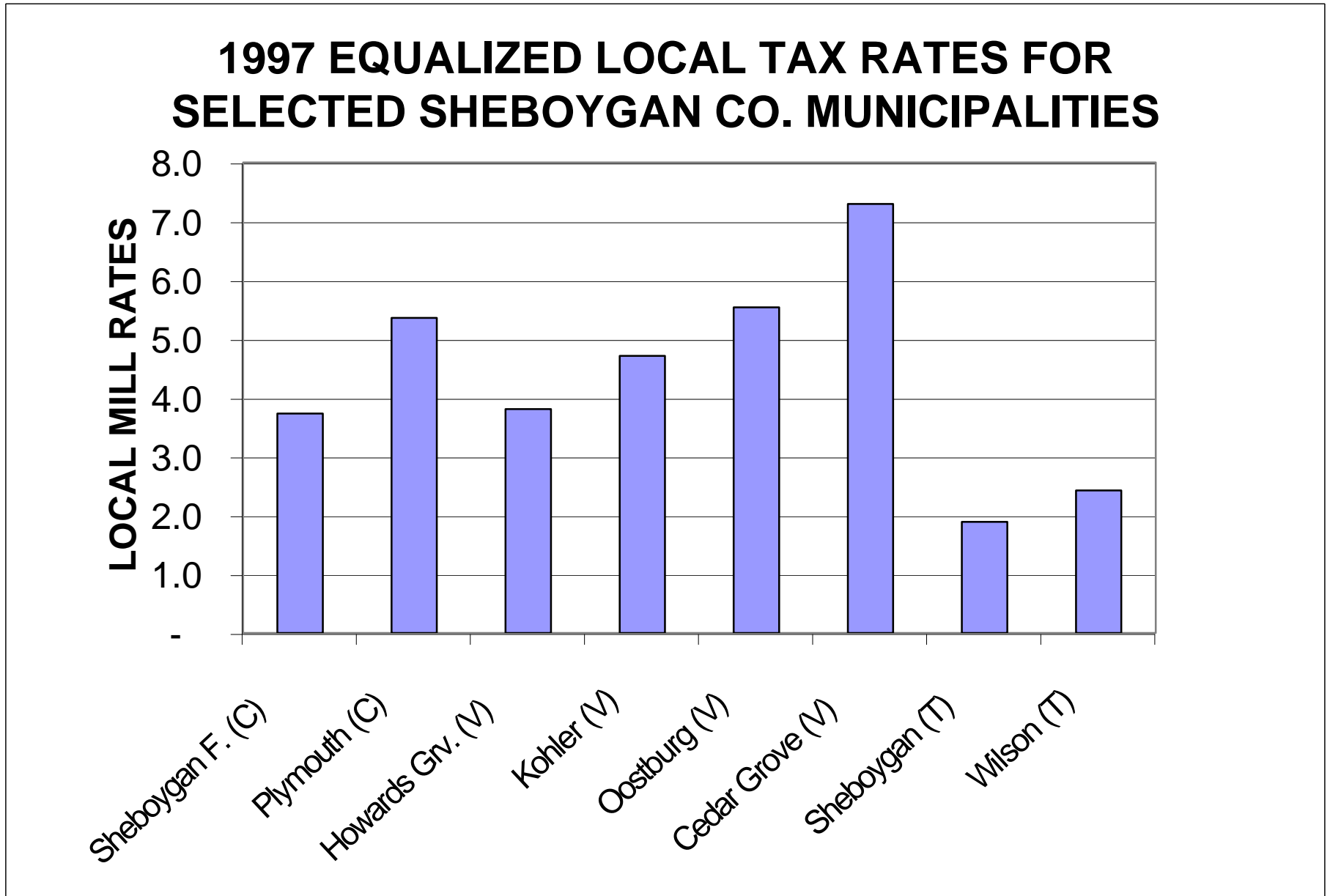
<u>Town</u>	<u>1997</u>	<u>Pop.</u>	<u>Nearby City or Village</u>
Algoma	1.33	4772	Oshkkosh
Freedom	1.43	5069	Appleton
Hull	1.78	5696	Stevens Point
Middleton	1.88	4225	Madison
Sheboygan	1.89	5269	Sheboygan
Greenville	2.28	5813	Appleton
Bristol	2.50	4489	Kenosha
Hobart	2.64	4921	Green Bay
Kronenwetter	2.65	5331	Wausau
Washington	2.65	6542	Eau Claire
Windsor	2.69	5259	Madison
Cedarburg	2.73	5565	Cedarburg/Grafton
Rib Mountain	2.78	6911	Wausau
Buchanan	2.82	4840	Appleton/Kaukauna
Summit	3.11	4516	Waukesha
Campbell	3.16	4570	La Crosse
Brookfield	3.26	6262	Brookfield/Waukesha
Suamico	3.42	7736	Green Bay
Beloit	4.13	7131	Beloit
Shelby	4.31	4930	La Crosse
Hallie	4.79	4838	Eau Claire
Madison	9.14	6613	Madison

FIGURE 1



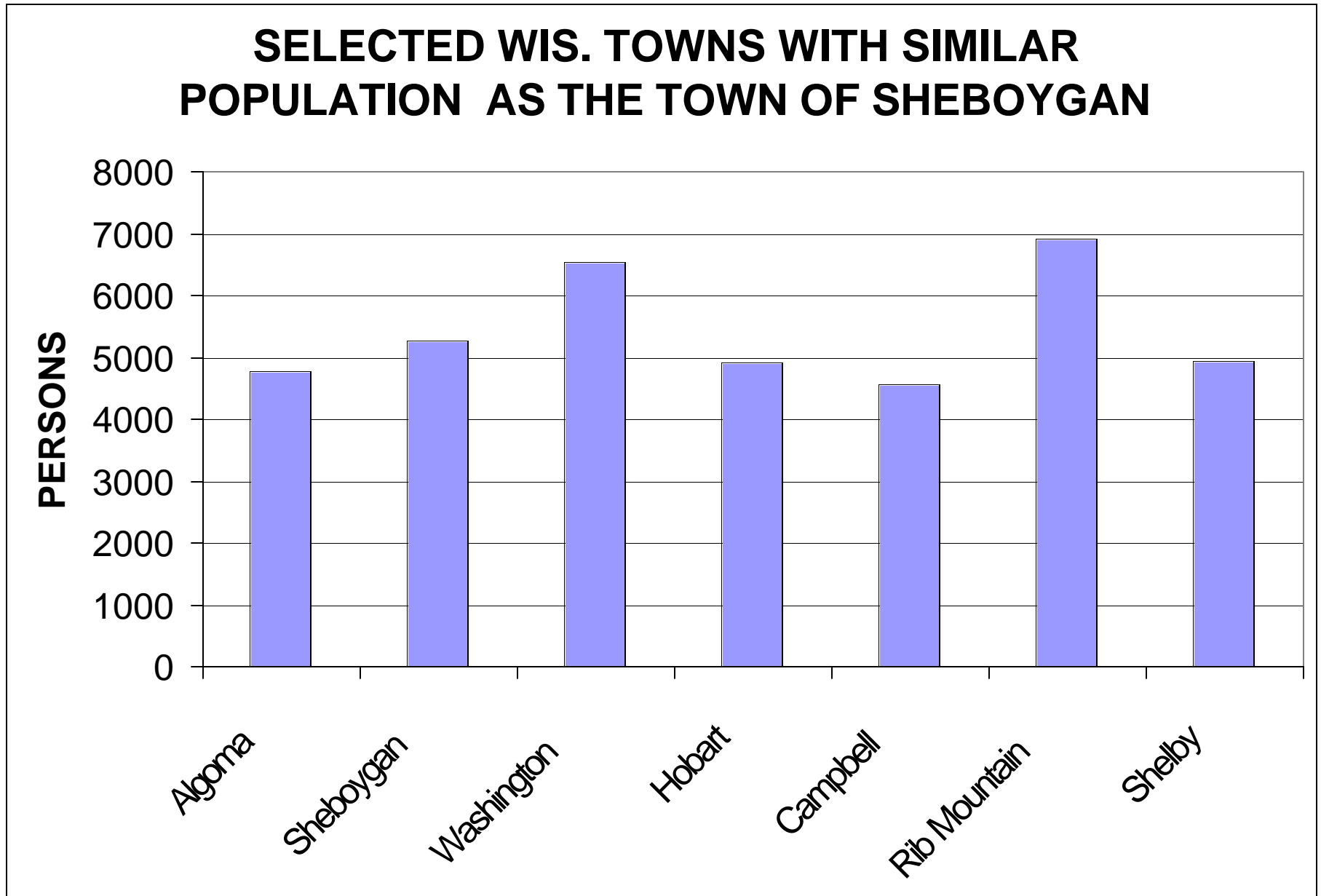
Source: Wisconsin Department of Administration, Demographic Services Center, 1999 Population Estimates

Figure 2



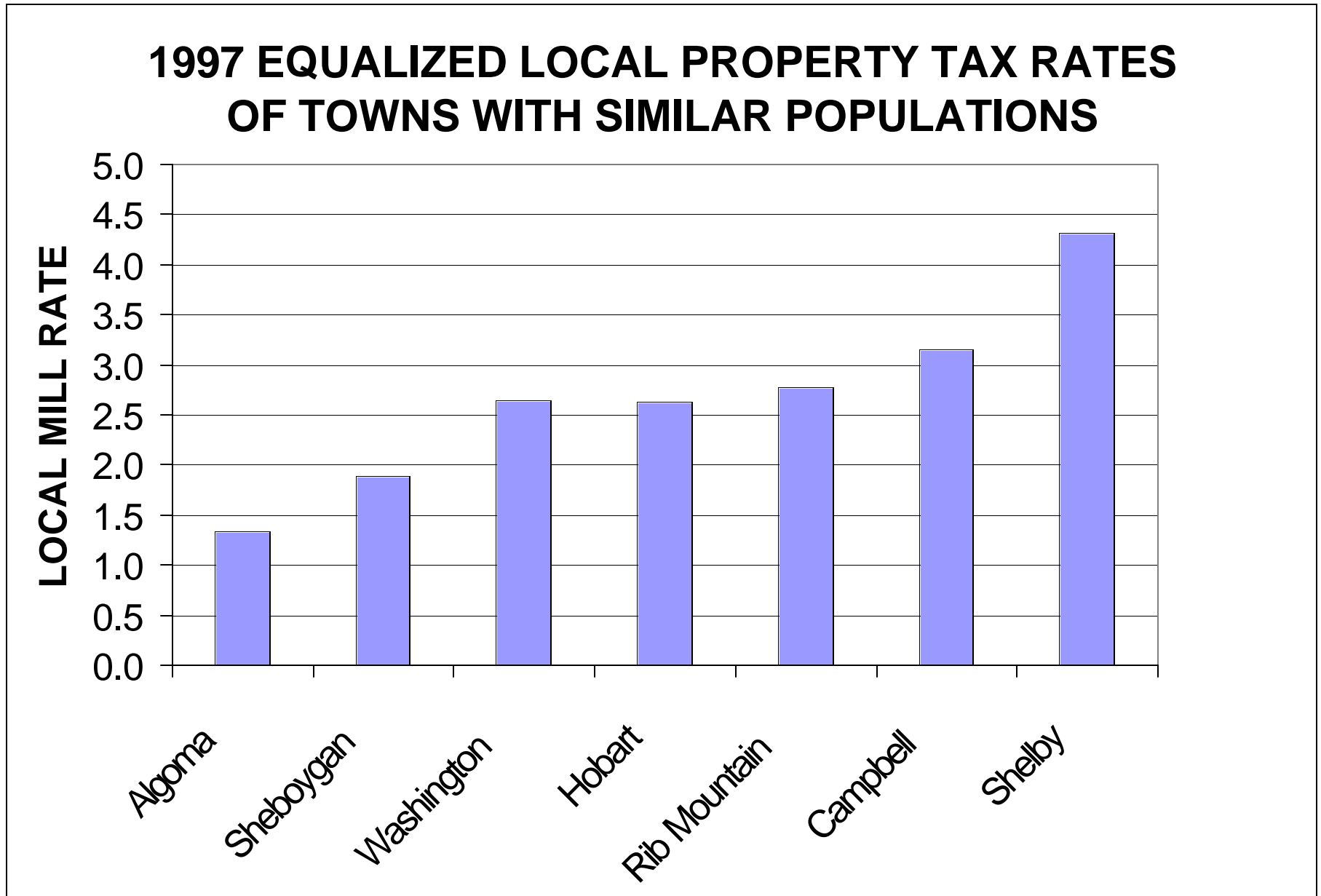
Source: Wisconsin Department of Administration, Demographic Services Center, 1999 Population Estimates

FIGURE 3



Source: Wisconsin Department of Administration, Demographics Services Center, 1999 Official Population Estimates.

FIGURE 4



Source: Wisconsin Department of Revenue

However, despite the Town's reticence to provide urban services at level commensurate with the issues identified herein, this is not to say that it does not have the potential to do so. In fact, the Town has a much higher per capita full-equalized value than the City. In 1997, the City's per capita equalized value was \$35,867 per person, while the Town's was \$60,810 per person. The state average for that year was \$47,570.⁶⁷ This shows that the Town does have the potential to raise higher revenues should it choose to engage in resolving urban issues.

Debt

In 1997, the total general obligation debt of the town of Sheboygan was \$4,085,700, which is 0.2% of its full-equalized value. For the same year the city of Sheboygan's total general obligation debt was \$44,540,200 or 2.5% of its full-equalized value. Both municipalities are well under the mandated debt cap of 5% of full-equalized value.

Village Budget and Government Tasks Performed by the Town

Petitioners did not submit a new proposed village budget to the Department. Instead, they submitted the current Town budget. From this, it appears as if Petitioners intend to provide the same number and level of services for a new village as they currently provide as a town.

Determination

Should incorporation occur, the town of Sheboygan has a sufficiently high property tax base, that compares favorably with those of similarly situated local governments, to meet the prospective cost of urban services. Therefore, the Department finds that this standard is met.

Section 2(b) Level of Services

The standard to be applied is found in s. 66.016(2)(b), Wis. Stats., and provides as follows:

The level of governmental services desired or needed by the residents of the territory compared to the level of services offered by the proposed village or city and the level available from a contiguous municipality which files a certified copy of a resolution as provided in s. 66.014(6), Wis. Stats.

Because the City passed a resolution expressing a willingness to annex the territory proposed for incorporation pursuant to s. 66.014(6), Wis. Stats., the following analysis will examine not only Town services, but those provided by the City as well. The following paragraphs examine fire protection, police protection, sewer and water service, solid waste collection, government services, planning, parks and recreation, streets and highways, and mass transit.

⁶⁷ Calculated by MBR with information from the Department of Revenue and Department of Administration. State's total equalized value of \$248,994,915,200 divided by the state's 1998 population estimate of 5,234,350.

Fire protection

The Town and City each have separate fire departments. Map 14, at Appendix A, shows the fire stations of the Town and City and their response radii. The following paragraphs describe first the Town’s fire department and then the City’s.

The Town has two fire stations. One is located within the Town business park on STH 42 and other is adjacent to the Town Hall at 3932 Superior Avenue. In addition, a third station is planned to be built on the site of a proposed Town park called *Rahn Park*, located on CTH Y and Hawthorne Road. The Town’s fire department is a volunteer fire department, meaning that it has no full-time career staff and offers no wages. However, firefighters are reimbursed \$10 per hour if a fire occurs during work hours and the fire chief, Chief Ken Gumm, is paid \$970 annually. The department has 35 volunteer firefighters, all of whom have had 60 hours of training as required by state law. In addition, two more firefighters were receiving training as of the May 13, 1999 hearing date. The Town may now have 37 volunteer firefighters.

The department has two drills per month as well as a business meeting. It also has one annual meeting. In addition to firefighting, the department inspects all businesses in the town twice per year and other buildings once per year. Nine of the 35 firefighters are trained to perform these inspections.⁶⁸

The Town has dropped from an insurance rating of 9 to a rating of 6, due to added fire hydrants, lower injury rates, lower levels of property loss, and quicker response times.⁶⁹ Regarding response times, the Town has a response time of 7.5 minutes⁷⁰, although the City questions this.⁷¹

Table 7⁷², below, shows the amounts budgeted by the City and the Town for fire service in 1999.

Table 7: Fire Protection Expenditures for the City and Town of Sheboygan

Municipality	Fire Protection Budget	Population	Cost/Resident
City of Sheboygan	\$5,421,843	51,050	\$106.21
Town of Sheboygan	\$60,000	5,114	\$11.73

As shown in the table, the Town’s fire protection budget is \$60,000, or \$11.73 per resident. However, this amount does not include the hydrant charge paid by the Town to Town Sanitary District No.3. The hydrant charge is paid from general Town funds. In 1998 it amounted to \$92,655.⁷³ The Town’s budget for fire protection also does not include fundraising efforts undertaken by the department. The primary fundraiser is an annual “brat fry” that has raised as much as \$12,000. The *Ladies’ Auxiliary* also holds various bake-sales and rummage sales.

⁶⁸ from hearing testimony of Ken Gumm, fire chief, and Larry Lenz, volunteer firefighter, 5/13/99).

⁶⁹ from hearing testimony of Larry Lenz, Town of Sheboygan volunteer firefighter, and also from 5/19/99 letter from Sherri Rusch-Regenwether, of Burkart-Heisdorf Insurance.

⁷⁰ From hearing testimony of Ken Gumm, Town of Sheboygan Fire Chief.

⁷¹ Reply Brief of the City of Sheboygan 9/17/99, pg. 7.

⁷² Information from Town Exhibit 3, which provides budget and expenditure information of the town of Sheboygan Fire Department and the city of Sheboygan Fire Department.

⁷³ Hearing testimony of Sandra Greger, Town of Sheboygan administrator. See also the Reply Brief of the City of Sheboygan, pg. 8.

Recently, volunteer firefighters conducted a letter-writing campaign to raise money for a \$15,000 “thermal imaging camera”.⁷⁴ If fundraising efforts and hydrant charges are included, the budget for fire protection is much greater than \$60,000. In fact, the true budget exceeds \$165,000, or roughly \$32 per resident. However, even this larger figure is still considerably less than the City spends on fire protection.

Despite significant anticipated residential and commercial growth, the Town does not intend to change to a full-time department, nor does it anticipate increasing the department’s budget.⁷⁵ The Town does recognize that additional equipment will be needed to serve new growth. For example, a ladder truck will be needed to access apartment buildings. The Town expects to pay for this equipment through brat fries and other fundraisers.⁷⁶

The city of Sheboygan has four fire stations and a fifth station is planned at 15th and Main Streets to serve planned development to the north. The fire stations are located strategically throughout the City to maximize access and response time. The City’s response time is less than four minutes.

Unlike the Town’s fire department and most of the other fire departments in Sheboygan County, the City’s fire department is a full-time paid department. It’s 1999 budget was over \$5 million. The department includes 69 career firefighters, three inspectors, two secretaries, and a mechanic. In addition to fire suppression, the department also provides emergency medical services (EMS), extrications, hazardous materials response, building inspections, emergency and non-emergency entries, fire/arson investigations, building code enforcement, and public education and fire safety training.⁷⁷ The City devotes proportionately more resources to its fire department than does the Town. The City devotes 13.7% of its expenditures for fire protection, whereas the Town devotes 4.6%.⁷⁸

In his affidavit, Deputy Chief Lawrence Schneider indicates that the City would be capable of providing services to Town areas. In fact, because it is a full-time career fire department, he expects that it would provide better and quicker service than that currently provided by the Town. The City would service Town areas from its existing stations and would also build 2 additional fire stations in the northwest part of the Town in the vicinity of County Road Y and Bender Road, and at 18th and Marvery Road on the south side.⁷⁹

Area residents may benefit from City fire protection service of some Town areas in order to avoid duplication of service. For example, one Town resident complained of the inefficiency of needing two fire hydrants right next to each other just because one is a town hydrant and the other a city hydrant.⁸⁰ Also, the confused boundaries frequently result in both City and Town fire

⁷⁴ Post-Hearing Brief of the Petitioners, pg. 17.

⁷⁵ Hearing testimony of Ken Gumm, fire chief of the town of Sheboygan volunteer fire department, 5/13/99.

⁷⁶ Hearing testimony of Sandra Greger, Town administrator, and Ken Gumm, Town of Sheboygan fire chief. See also Petitioner’s Brief in Support of Incorporation, at pg. 17.

⁷⁷ Affidavit of Lawrence Schneider, Deputy Chief of the City of Sheboygan Fire Department, May 11, 1999.

⁷⁸ Wisconsin Department of Revenue, 1997 County and Municipal Revenues and Expenditures.

⁷⁹ Affidavit of Lawrence Schneider, Deputy Chief of the City of Sheboygan Fire Department, May 11, 1999, and memo, Richard Reiss, Chief, to Steve McLean, City Attorney, dated May 19, 1999.

⁸⁰ Hearing testimony of Barbara Walters, Town resident, 5/13/99.

departments being called to the same site. Ironically, the day before the May 13, 1999 hearing, this exact scene was played out on a Town peninsula.⁸¹

Police service

The Town does not have its own police department but instead relies on police services provided by the Sheboygan County Sheriff's Department. The Sheriff's office is funded through the general county levy to which all municipalities in Sheboygan County contribute.

The Sheriff's office provides two types of service: *contract* service and *per call* service. Per call service is provided to every municipality in Sheboygan County that does not have a police department, regardless of whether the municipality is incorporated or not. If a community has a police department, then the Sheriff's office does not provide per call service even though the community pays for it through the county levy. This means that communities with a police department subsidize police service in those communities without a police department. Per call service means that sheriff's deputies are dispatched to incidents based on calls. Whereas officers on patrol service look for illegal activity, per call service is much more reactive in nature. Also, with per call service, sheriff's deputies may only enforce state law. They may not enforce local ordinances. Contract service is more comprehensive. With contract service, the Sheriff's department guarantees patrol service for at least the contracted number of hours and deputies may react to situations they personally witness or when notified by a dispatcher. Also, contract service permits deputies to enforce any municipal ordinances that may exist in a community.⁸²

The town of Sheboygan enjoys both per call service and contract service from the Sheboygan County Sheriff's Department. It receives per call service because it does not have a police department of its own. This service is funded through the county general levy, to which the Town contributes along with other municipalities within the county. Town residents use per call service frequently. Between January 1, 1998 and December 31, 1998 (1999 statistics are not yet available) the sheriff's office responded to 2060 incidents in the Town.

As recently as January 1, 2000, the Town began receiving contract services from the Sheriff's Department, in addition to per call services. The Town contracted for 20 hours per week of patrol services and enforcement of Town ordinances.⁸³ It will pay Sheboygan County a total of \$15,506.40 for six months of service. After the six month period, the contract contains a provision allowing the parties to extend the contract.⁸⁴

In addition to police services provided by the Sheboygan County Sheriff's Department, the Town also employs two *constables*. These constables answer questions about ordinances and apprehend stray animals.⁸⁵ However, they do not have arrest powers and may not carry weapons. They cannot be considered identical to police officers. In 1999, the Town budgeted only \$1,050 for constables.

⁸¹ Hearing testimony of Tim Ellis, Town of Sheboygan volunteer firefighter and former Town resident.

⁸² Personal communication with Inspector Tim Grasse, Sheboygan County Sheriff's Department, 1/19/2000.

⁸³ *Agreement for Special Law Enforcement Services Between Sheboygan County and the Town of Sheboygan*- December 1999.

⁸⁴ *Ibid.*

⁸⁵ Hearing testimony of Sandra Greger, town of Sheboygan Administrator, 5/13/99.

If the Town were to incorporate, it would not necessarily lose the services of the Sheriff's Department. As indicated above, the Sheriff's Department provides per call service to municipalities, regardless of incorporation status, if those municipalities do not have a police department. Therefore, the Town could continue to enjoy per call service if it chose not to have its own police department. The Town could also continue to contract for service with the Sheriff's Department. Petitioners do not anticipate creating their own police department and do not anticipate contracting for additional service. According to Petitioners, Town residents and business owners do not desire a higher level of police service.⁸⁶ However, given the anticipated development in the Town and given the fact that the Town has ordinances of its own, the desire for low level police protection may not be feasible.

Regarding the Town islands and peninsulas, the City has alleged that these areas make providing police protection by both the City and the County difficult.⁸⁷ This was especially true in the recent past when officers from both the City and County responded to calls in these island and peninsula areas. When a call was received from these areas, neither the City's police department nor the county sheriff's department knew who was responsible, so to be safe both responded. These problems have been lessened to some extent by a computer system called *Enhanced 911* which identifies whether the caller is located in the Town or City. With this system, jurisdiction may be determined even where the caller has no idea as to their location or government.⁸⁸

The City of Sheboygan maintains its own police department. It does not receive patrol services from the Sheriff's Department, despite the fact that it contributes to the county levy. In fact, the city of Sheboygan, the city of Sheboygan Falls, the city of Plymouth, and the villages of Elkhart lake and Kohler do not use the county sheriff's department for patrol services and yet have 56% of the full-equalized property value in Sheboygan County.⁸⁹

The City's police department includes 90 officers and 37 support employees that serve in records, in fleet maintenance, and as telecommunicators, radio technicians and community service officers. In addition to patrol service and law enforcement, the department has a SWAT team, a search and recovery dive unit, a crime reconstruction unit, a canine unit, a metropolitan drug unit, an Enhanced 911 telecommunications center, a community policing unit, a records management system, a D.A.R.E./G.R.E.A.T. Education program, a gang unit, a bicycle patrol unit, and a truancy abatement center, amongst others. The department's 1999 budget was \$8.1 million.⁹⁰

Sanitary sewer service

Both the City and the Town provide sanitary sewer service. The City has had sanitary service since at least 1936 when the Sheboygan Regional Wastewater Treatment Facility was originally built. At that time, however, it served only the City and not the region.⁹¹

Planning for sanitary sewer service in the Town began in the mid-1960s with the *Metropolitan Sewerage District Study* (1969) by Donohue & Associates. This study proposed that sewer

⁸⁶ Petitioners Brief in Support of Incorporation, at pg. 18.

⁸⁷ Post Hearing Brief of the City of Sheboygan, at pg. 9.

⁸⁸ Interview with Tim Grasse, Inspector with the Sheboygan County Sheriff's Department, 1/27/00.

⁸⁹ 1998 Town, Village, and City Taxes, Wisconsin Department of Revenue.

⁹⁰ Affidavit of Ralph Marcheske, Deputy Chief of the City of Sheboygan Police Department, May 7, 1999.

⁹¹ *2015 Sheboygan Urbanized Area Sewer Service Plan* (1998), pg. 15.

service be provided to the entire Town.⁹² In the early 1970s, federal and state funding for regional wastewater facilities became available. At that time, the Wisconsin Department of Natural Resources (WDNR) and the Environmental Protection Agency (EPA) began encouraging regional treatment plants rather than smaller, more numerous plants. The reason for this policy was that administrative costs tended to be greater with a larger number of small individual plants. WDNR and EPA persuaded the City to agree to accept waste from surrounding communities and in return, the City received grant money to rebuild its existing treatment facility.⁹³ This agreement, which is still in effect, was called a *Joint Regional Treatment Agreement*. It was signed in 1975 and includes the City, the Town, the city of Sheboygan Falls, the village of Kohler, the town of Sheboygan Falls, and the town of Wilson. The agreement provides for the shared use and cost of the City's wastewater treatment facility. Although the City was to continue owning and operating the facility, the other participating municipalities were given responsibility for their share of the treatment costs, including transport of sewage to the plant, and the overall cost of operating and maintaining the facility.⁹⁴

Consistent with this 1975 agreement, the Sheboygan Regional Wastewater Treatment Facility was rebuilt in 1979-80 and began accepting waste from area municipalities. Currently, the facility is operating well within WDNR standards for treatment efficiency and is only operating at two-thirds of capacity.⁹⁵ However, some of the pipes, lifts and interceptors that transport sewage to the facility may be at capacity and may need to be improved, particularly given the amount of development anticipated by the Town.⁹⁶

The wastewater treatment system in the City consists of three major lift stations and four major interceptor sewer lines. The lift stations are designed to move wastewater from lower areas to higher areas and then to allow it to continue moving by gravity flow. These lift stations are located at Seventh Street and Kentucky Avenue, North Avenue and Lake Michigan, and at the wastewater treatment plant. The four interceptors are referred to as the Western, South side, North Avenue, and Sheboygan River interceptors. The Western interceptor runs along Washington Avenue to the treatment plant. The South Side interceptor runs from the Seventh Street and Kentucky Avenue lift station to the treatment plant. The North Avenue interceptor connects the North Avenue and Lake Michigan lift station to the Seventh Street and Kentucky Avenue lift station. The Sheboygan River interceptor runs along Wisconsin Street and links into the lift station at Seventh Street and Kentucky Avenue.⁹⁷

The wastewater treatment system in the Town consists of seven lift stations. These stations are located at the north end of Riverview Drive, east of County Highway Y between Grote and Longacre Roads, at the south end of North 47th Street, at the south end of North 38th Street, on Blackstock Road, at County Road J, and at Charter Hills Road.⁹⁸ In addition there are six pumping stations and two major interceptors: the Pigeon River interceptor and the North/South interceptor. The Pigeon River interceptor serves the northern portion of the Town while the

⁹² *A Sanitary Sewer Study for the Town of Sheboygan Sanitary Sewer District No.2* (1998) by Rust Environment & Infrastructure, pg. 1.

⁹³ *2015 Sheboygan Urbanized Area Sewer Service Plan* (1998), pg. 15.

⁹⁴ Petitioners Brief in Support of Incorporation, pg. 18. See also *the 2015 Sheboygan Urbanized Area Sewer Service Plan* (1998), pg. 15.

⁹⁵ *2015 Sheboygan Urbanized Area Sewer Service Plan* (1998), pg. 15.

⁹⁶ Interview with Robert Peterson, Director of the City of Sheboygan Department of Development, January 27, 2000.

⁹⁷ *2015 Sheboygan Urbanized Area Sewer Service Plan* (1997), at pg. 16.

⁹⁸ *Ibid.*, pg. 15.

North/South interceptor serves the south portion of the Town. Some sewers within the Town discharge directly into the existing City sewer system.⁹⁹

All City residents and almost all Town residents receive sanitary sewer service. Town sewer service is provided by the town of Sheboygan Sanitary District No.2. The boundaries of this district are essentially identical to those of the Town, the only difference being that the district includes a small piece of the town of Sheboygan Falls. Only a handful of Town residents continue to use individual private sewage systems; the rest receive sanitary sewer service. The Town passed a resolution requiring all new housing units to receive sanitary sewer services.¹⁰⁰

In 1998 the Town hired Rust Environment & Infrastructure to study whether additional infrastructure may be needed to provide future sanitary sewer service. The Study is called the *Town of Sheboygan Sanitary District No.2 Sanitary Sewer Study* and was published in 1998. The study recommends a number of improvements. One of these improvements was the North/South Interceptor, which was undertaken through a cooperative effort between the City and the Town. As to other recommended improvements, as indicated by the Tax Revenue section of this determination, it appears that the Town has the financial ability to pay for these improvements as they become necessary.

Both the City and the Town are also guided by the *2015 Sheboygan Urbanized Area Sewer Service Plan* (1997), prepared by Baylake Regional Planning Commission. Section 208 of the Clean Water Act requires area wide water quality management plans, more commonly known as “sewer service area plans”. These plans are designed to project future sewer service needs, establish a 20-year sewer service area, provide technical data, identify sensitive environmental resources and provide a strategy for their protection, define the procedures for varying sewer service boundaries, and serve as a guideline for community plans.¹⁰¹ *The 2015 Sheboygan Urbanized Area Sewer Service Plan* was approved by the WDNR in 1998. As a result, all permits for wastewater treatment facilities, facility plans, interceptors and sewer extensions in the Sheboygan area must be in conformance with this plan. The Sheboygan Urbanized Area Sewer Service Plan Technical Advisory Committee (TAC) reviews projects for conformance with the plan.¹⁰² Because both the City and Town are entirely contained within the sewer service area, sewer extensions are not an issue. Only if the City or Town strove to extend sewer service to areas beyond their boundaries would extensions become subject to the procedures set forth in the plan.

Water

Both the City and Town provide water service separately. Whereas the City and surrounding municipalities share sewer service facilities, there is no such cooperative agreement between the City and Town regarding water.

Prior to 1980, Town residents used individual wells. Many of these wells grew contaminated with benzene and other chemicals that leaked from a contaminated landfill located in the Town at

⁹⁹ *A Sanitary Sewer Study for the Town of Sheboygan Sanitary District No.2* (1998), pg.1.

¹⁰⁰ Hearing testimony of from Sandra Gregor, town of Sheboygan administrator, May 13, 1999, and interview with Michael J. Bauer, attorney for the town of Sheboygan, January 27, 2000.

¹⁰¹ *2015 Sheboygan Urbanized Area Sewer Service Plan* (1997), pg. 4.

¹⁰² *Ibid.*, pg. 5.

the corner of 40th Street and CTH O. The landfill was closed, however, the Town is still paying for remediation and testing. In 1998 the Town paid a little over \$100,000 for this work.¹⁰³

Because of the contamination to some residential wells, the Town asked the City for permission to hook up these residents to City water. However, the City would not allow hookup without annexation of the contaminated parcels to the City. Residents did not want to annex, nor did the Town want them to. Instead, development of a Town water system began. In the meantime, residents bought bottled water. Volunteers were used to haul water to the elderly. The Town’s water system took 18 months to create. Many Town residents hold the City responsible for their 18 months of hardship in buying and hauling bottled water.¹⁰⁴

The Town’s water service is provided by the Town of Sheboygan Sanitary District #3. This district has developed incrementally, piece by piece. Originally, when the system came online in 1986 it consisted of a well, a water tower, and 4 miles of water mains. The well, called Well #1, is located 1000 feet east of CTH Y on the south side of Superior Avenue. The water tower is located on Superior Avenue and North 40th Street, on the property of the Town Hall.¹⁰⁵

In 1992, the Town hired Donohue Environment & Infrastructure to plan for its future water service (Donohue has since changed its name to “Rust Environment & Infrastructure” and then again to “Earthtech, Inc.”). Donohue prepared a report that described existing water facilities and also projected future water demand and improvement needs. The report was called *A Comprehensive Plan for Water System Improvements for the Town of Sheboygan Sanitary District No.3 – Water: Sheboygan County, Wisconsin (1992)*. The Town’s population was projected to increase to 4183 by 2010 and 4,498 by 2030. Obviously these projections were low. The report projected water usage to increase from 225 gallons per metered user per day (gpm) in 1991 to 300 gpm by 2030. The following table illustrates in more detail the projected increase in water usage.¹⁰⁶

Table 8: Projected Water Usage for Sanitary District #3

Year	Metered Users	Gallons per metered user per day	Users Gallons per day
1987	158	181	28,500
1988	174	202	35,200
1989	206	185	38,000
1990	256	176	45,200
1991	334	225	75,000
2000	676	239	161,600
2010	1057	255	269,500
2030	1467	300	440,100

¹⁰³ 1998 budget of the Town of Sheboygan.

¹⁰⁴ Hearing testimony of Sandra Greger, town of Sheboygan administrator, and hearing testimony of James Schwimm, town of Sheboygan resident, 5/13/99.

¹⁰⁵ *A Comprehensive Plan for Water System Improvements for the Town of Sheboygan Sanitary District No.3 – Water: Sheboygan County, Wisconsin (1992)*, by Donohue Environment & Infrastructure, pg. 2-1.

¹⁰⁶ *Ibid.*, pg. 3-2.

Based on the projected population growth and on increasing water usage per resident, the report recommended several improvements. It recommended a second well, as well as a second water tower. It also recommended installation of additional water lines to serve the far west and far north portions of the Town.¹⁰⁷

In accordance with this report, the district added a second well and also a water tower, as well as building additional mains. In addition, the district has purchased a site for a third well. The district paid for these improvements through assessment of residents. All residents must pay assessments whether they participate in the water district or not.¹⁰⁸

According to Petitioners, the Town has a wellhead protection plan for Well #1 and has commenced a plan for wellhead protection at Well #2. Wellhead protection attempts to regulate the land uses around a well so as to keep its source water clean. For example, a plan might discourage oil refinery activity near the wellhead. After the Town's experience with its contaminated landfill, it is easy to understand the desire for wellhead protection.

According to Petitioners, since building the second water tower and well, the Town has not had difficulty in meeting this demand. In fact, they have throttled one pump down because they have too much capacity.¹⁰⁹ However, despite this capacity, the demand for water seems to lag. While the Town's plan projects approximately 2000 users by the year 2000,¹¹⁰ only 800 of the Town's 5,188 residents receive water.¹¹¹ The plan shows 1008 users in 1991. Therefore, the Town has actually lost 200 users since then and is well off the plan's projected numbers, despite the fact of the Town's rapid growth. The Town has provided the Department with no explanation for this lagging demand.

Providing water service to residents in peninsula and island areas is uneconomical for the Town, particularly in the "Tree Street" neighborhood. According to the City, Town residents in these areas often request City water. City policy is to require annexation before extending water services. However, because state law requires parcels to be contiguous to the City, not all residents may be annexed. As a result, many of these residents resort to drilling individual wells, even though it is contrary to their wishes.¹¹² The Town freely admits that it cannot economically provide water service to some peninsula and island areas. Therefore, it tends to consent to annexation of these areas.¹¹³

Regarding City water services, the City of Sheboygan Water Utility serves City residents and was founded in 1909. The Utility serves not only City residents but also the village of Kohler and the village of Sheboygan Falls. The Utility is different from many other utilities and districts in the state in that it takes its water directly from Lake Michigan instead of aquifers. The Utility employs 34 full-time individuals in its administrative, distribution, and operations departments. The administrative department conducts billing and collection of water bills, and also collects sewer charges. Annual water revenues are approximately \$4 million. The distribution department maintains all Utility facilities, including 204 miles of water main, 1,890 fire hydrants, 2,588 valves, two elevated water towers, a standpipe, and a reservoir. The operations department

¹⁰⁷ Ibid., 3-1 and 4-1.

¹⁰⁸ Hearing testimony of Sandra Greger, town of Sheboygan administrator, 5/13/99.

¹⁰⁹ Hearing testimony of Sandra Greger, Town of Sheboygan Administrator, 5/13/99.

¹¹⁰ *Comprehensive Plan for Water System Improvements for the Town of Sheboygan Sanitary District No.3 – Water: Sheboygan County, Wisconsin* (1992), Figure 2, pg. 3-2.

¹¹¹ Hearing testimony of Sandra Greger, town of Sheboygan Administrator, 5/13/99.

¹¹² Interview with Bob Peterson, City of Sheboygan Director of Development, 1/27/00.

¹¹³ Hearing testimony of Sandra Greger, town of Sheboygan Administrator, 5/13/99.

operates the Utility's water treatment plant. The plant has a capacity of 34 million gallons per day. It is in full conformance with WDNR drinking water standards.¹¹⁴

As to the issue of extending City water services to Town areas, the City sees no insurmountable barriers for doing so. However, details of providing such service require a full engineering analysis and that has not yet been done. Current water demand in the Town would not seriously affect the treatment plant's capacity, though the Utility might need to replace undersized town mains and add pressure control and booster systems. The Utility believes it can actually provide Town residents with water more cheaply than the Town itself. This is due to the fact that its rates are the second lowest in the State and half those found in the Town, and also due to the fact that the Town already has some existing water service infrastructure. The City might take advantage of this existing infrastructure rather than building from scratch. Of course, a study needs to be done to determine the compatibility of these systems.¹¹⁵

The fact that both the City and Town have separate water service systems is illustrative of the potential inefficiencies and added costs of multiple governmental units within a metropolitan area. This idea will be discussed further in the "Metropolitan Impact" section.

Solid Waste

The Town currently provides weekly curbside garbage and recycling pickup which is included in the Town's general tax levy. The Town contracts with Superior Services for its garbage collection and recycling services. In addition, the Town also utilizes the Sheboygan County and the Wisconsin Department of Agriculture, Trade and Consumer Protection (DATCP) hazardous waste drop-off collection program (from Petitioner's brief at 19).

The City provides solid waste pick-up once per week at the driveway for homes. Apartment complexes with more than 3 units and commercial buildings must contract for private waste pick-up. The City also provides for pick-up of recycleables with an alternating weekly schedule to collect paper and other recycleables. The City currently has seven routes for waste pick-up. The City maintains a drop-off cite for yard waste and other recycleable materials on Jersey Avenue and 20th Street west.

Information provided from the City Public Works Department indicated that, although they have not been asked to review the possibility of providing services to the Town, the City has the current capacity to provide waste pick-up to the Town.¹¹⁶

Government

The Town has 8 full-time employees: a Town administrator, a director of Sanitary District #2 (sewer), a director of Sanitary District #3 (water), a building inspector, a clerk, and three highway department employees. In addition to these full-time employees, the Town is also served by Town board members, a Town assessor, a Town treasurer, park commission members, plan

¹¹⁴ Affidavit of Joe Trueblood, Superintendent of the Sheboygan Water Utility, May 11, 1999.

¹¹⁵ Ibid.

¹¹⁶ Personal communication with Lloyd Turner, City of Sheboygan Department of Public Works. February 7, 2000

commission members, a park committee, a land use committee, 16 poll-workers, 9 part-time employees, and 35 volunteer firefighters.¹¹⁷

The City has 489 full-time employees. The following table breaks these employees into their various departments.¹¹⁸

Table 9: Municipal Employees for the City of Sheboygan

Department	Number of Employees
Police	118
Fire	79
Streets and Sanitation	92
City Parks	30
Administrative	59
Library	33
Parking and Transit Utility	31
Wastewater	13
Water	34
TOTAL	489

In addition to full-time employees, the City is also served by numerous boards, commissions, and committees. The city of Sheboygan is structured under a Mayor/Council form of government. The Common Council is composed of sixteen members, two from each of eight wards in the City. The mayor is popularly elected, and acts as chief executive officer of the city, presiding at all Common Council meetings. The Common Council is advised by the numerous boards, commissions, and committees.¹¹⁹

The number of full-time employees of the City, as well as the numerous elected and appointed officials, and boards and commissions, provides a good indication of the differences in services offered by the City and the Town.

Planning

The City

The City of Sheboygan has a long history of planning and zoning. In 1928 the City developed its first zoning ordinance, patterned after a model ordinance designed by the United States Department of Commerce. In 1947 the State of Wisconsin Department of Community Planning and Development (no longer in existence) developed a street design plan for the City. In 1967 the City developed a Comprehensive Plan and revised its zoning code based on this plan. In 1987 the City hired *Donohue Environment & Infrastructure* to update its comprehensive plan. However,

¹¹⁷ Town Exhibit T-28, Hearing testimony of Sandra Greger, Town of Sheboygan administrator, and Hearing testimony of Char Gumm, May 13, 1990.

¹¹⁸ City of Sheboygan Exhibit 40.

¹¹⁹ *Sheboygan Transit Development Program (TDP) 1999-2003* (1998) by BayLake Regional Planning Commission, pg. 19.

the City was dissatisfied with the text portion of the plan and so the plan was never adopted. Only the map was used.¹²⁰

In 1988 the City prepared the *City of Sheboygan Park and Open Space Master Plan*. This plan is currently being updated as part of a comprehensive planning effort. Also in 1988 the City began its *HarborCenter Plan* to revitalize the City's downtown, riverfront and lakefront areas. At that time, 70% of the storefronts were vacant and the downtown area needed attention. In 1994 the City did the *Harbor Centre Master Plan - Phase II*, with assistance from a number of private consultants. This plan is much more detailed in its prescriptions for the area than was the first Harbor Centre Plan. As a result of this phase II plan the area is improving. For example, storefronts are now full. The City believes that the downtown and harbor areas are the heart and soul of the region and that improving them have had positive ramifications beyond the City.

In 1996 the City developed its Stormwater Management Plan. The following paragraphs will discuss stormwater management in some detail because it is a good example of a regional problem.

The Sheboygan River Watershed was designated a "critical watershed" in 1985 under the Wisconsin Nonpoint Source Water Pollution Abatement Program. It was designated a critical watershed because it drains into Lake Michigan and also because it contains unacceptably high levels of pollution. The watershed encompasses an area of approximately 245 square miles and includes lands within both Fond du Lac and Sheboygan counties.¹²¹ In 1993 a plan called the *Nonpoint Source Control Plan for the Sheboygan River Priority Watershed Project* was developed by WDNR, Fond du Lac and Sheboygan counties, the Village of Kohler, and the Cities of Sheboygan Falls and Sheboygan. The plan identified sources of nonpoint pollution, set water quality goals, and specified recommendations for how to achieve these goals.¹²²

In 1996 the City developed the *Stormwater Management Plan for the City of Sheboygan*. This plan represented the first major step in implementing the earlier plan from 1993. It was also prepared in anticipation of the WDNR requiring stormwater discharge permits. In fact, WDNR now does require stormwater discharge permits under Chapter 216 of the Department of Natural Resources Administrative Rules.¹²³ The law requiring permits is commonly referred to as "NR 216". The stormwater plan was funded by the City and with WDNR grants. The plan is broader than the 1993 plan in that it also included the Pigeon River. The plan was broken into two phases. Phase I included only those drainage areas within the City and included the work already done as part of the 1993 plan. Phase II included surrounding areas in the village of Kohler, and the towns of Mosel, Sheboygan, and Wilson. Map 15, at Appendix A, shows the Phase II planning area and shows that almost all of the town of Sheboygan is included. The City invited these areas to participate because stormwater runoff is an issue that extends beyond the City's boundaries. It is a regional issue and any effort to address it must include all municipalities in the region.

¹²⁰ Hearing testimony of the City of Sheboygan, 5/13/99.

¹²¹ *Stormwater Management Plan for the City of Sheboygan* (1996) by Rust Environment & Infrastructure, at pg. 2-1.

¹²² *Ibid.*, pg. 2-1.

¹²³ *Controlling Stormwater in Wisconsin: Municipal Considerations and Strategies*, by Laurie J. Kobza. Wisconsin Environmental Law Journal 2:1:1-33 (1995).

However, participation of these surrounding municipalities broke down over the question of costs. Surrounding municipalities did not see enough of a benefit for themselves to justify any financial contribution.¹²⁴ As a result, the City prepared Phase II section for them.

The *Stormwater Management Plan for the City of Sheboygan* identifies sites within the planning area that produce flooding and high levels of nonpoint source pollution. The plan cites evidence from Wisconsin and throughout the country as to how different land uses influence levels of stormwater runoff. For example, whereas natural areas such as woodlands and wetlands tend to absorb and slow water, urban areas (roof tops, streets, parking lots) do not. Urban areas increase both the speed and quantity of runoff. Land use also affects the quality of water. Whereas natural areas filter pollutants from water runoff, urban areas do not. The plan shows how pollution tends to originate from urban areas. For example, oil and other fluids leak from cars, salt and sand are dumped onto streets in winter, lawns are fertilized, and people litter. In one study, the peak flow rate from the urban watershed was 262 times that of the rural watershed, and the amount of sediment loading was 361 times that of the rural watershed.¹²⁵

The plan also found that surrounding municipalities also impact the Sheboygan and Pigeon River watersheds. The town of Sheboygan has 4,350 acres within the Phase II planning area, roughly 40% of the total. The town of Wilson has 2,500 acres, or 23% of the total.¹²⁶ The plan warns that development in these areas may result in increased stormwater runoff with less of the water being absorbed. This may leave less water for streams and creeks. Also, the water runoff may be of a lower quality, and move at a higher speed and greater volume. As indicated by their testimony and brief, the Town anticipates significant residential and commercial development. However, according to the stormwater plan, a change in surface hydrology from the existing level of development to full build out conditions could greatly increase the total annual runoff volume. The plan projects that residential development could increase runoff by as much as 300 percent and commercial and industrial development by as much as 400 percent. Retention ponds may need to be added in Town areas and culverts, ditches may need to be enlarged to provide for this increased storm-runoff.¹²⁷ The Town does not have a system of stormsewers. The Town is just beginning to engage in planning for stormwater management.

Because the phase II municipalities impact the region's water quality, the *Stormwater Management Plan for the City of Sheboygan* recommends that the City work closely with them as well as with the county. The plan recommends that all municipalities within the basin adopt a uniform set of stormwater management policies, criteria and standards.¹²⁸

NR-216 requires the city of Sheboygan to obtain a stormwater discharge permit because it has been identified as a critical watershed area. However, NR-216 also allows a permittee to include in its permit any surrounding communities which contribute to nonpoint source water pollution. Unable to get voluntarily participation from surrounding municipalities regarding the problem of stormwater runoff, the City petitioned WDNR in February of 1997 to have them "designated" as co-permittees. Included in this petition was the city of Sheboygan Falls, the villages of Kohler and Howards Grove, and the towns of Sheboygan, Sheboygan Falls, Wilson, and Mosel. Of these communities, WDNR determined that only the village of Kohler, the town of Wilson, and the

¹²⁴ Hearing testimony by the City of Sheboygan, May 13, 1999.

¹²⁵ *Stormwater Management Plan for the City of Sheboygan* (1996) by Rust Environment & Infrastructure, at pg. 3-3.

¹²⁶ *Ibid.*, pg. 4-2.

¹²⁷ *Ibid.*, pg. 10-5.

¹²⁸ *Ibid.*, pg. 1-4.

town of Sheboygan are eligible as co-permittees. In response to their designation, these three municipalities have signed a §66.30, Wis. Stats., agreement to apply jointly for a NR-216 stormwater discharge permit. By applying jointly these communities are able to coordinate and save costs. The permit processes for the City and for the three co-permittees are on different timelines. The City's expects its permit to be finalized in March of 2000, whereas the co-permittees still need to submit a plan and get WDNR approval for their pre-application, in addition to obtaining a final permit.¹²⁹

Regarding other City plans, the City is currently developing a comprehensive plan, with assistance from Vandewalle & Associates, Inc. The plan will include the updated *Parks and Open Space Master Plan*, an updated *Northside Neighborhood Plan*, and the nine plan elements required by the recently passed comprehensive planning legislation. Completion of this plan and adoption by the City counsel are anticipated in the near future.¹³⁰

Other plans impacting the City are the *Sheboygan County Comprehensive Outdoor Recreation and Open Space Plan* (1998) and the *Year 2020 Sheboygan Area Transportation Plan (SATP)* (1996). The Recreation and Open Space Plan primarily contains and restates the City's parks and open space plan from 1988. The 2020 SATP transportation plan is required by federal law for metropolitan areas. Staff from Bay-Lake Regional Planning Commission prepared the plan with input from municipal officials throughout the planning area, including the City of Sheboygan and town of Sheboygan. In conjunction with the 2020 SATP, and also pursuant to federal ISTEA requirements, a plan for mass transit was also developed. This plan is called the *Sheboygan Transit Development Program (TDP) 1999-2003* (1998). Because the Sheboygan Transit System currently includes routes in the city of Sheboygan, the village of Kohler and the city of Sheboygan Falls, the plan primarily discusses mass transit in these three communities.

Regarding zoning, the City revised its code in 1996 with assistance from Vandewalle & Associates of Madison. The City's code is quite strict from the standpoint of site design. It is believed to be amongst the most strict zoning codes in the state.¹³¹ For example, almost every proposed type of development must be submitted to an architectural review board. This board consists of 3 architects, a real estate expert, a plan commission member and a contractor. For large project proposals, HNTB, a national private consultant firm, is hired to do impact analysis. The City's zoning code creates a variety of lot sizes so as to accommodate a wide range of housing choices, prices and styles. Whereas the Town's minimum lot size is 12,000 square feet, the City's ranges from between 6,000 to 10,000 square feet.¹³²

Town

If the Town of Sheboygan were to incorporate, it would lose the services of the Sheboygan County Planning and Resources Department. The Town does not see this as a significant loss however because it has not often used county planning services in the past. Instead, the Town hires private planning and engineering consultants on a project-by-project basis.¹³³ The Town has no comprehensive plan, nor is one being developed. The Town is in the process of preparing a

¹²⁹ *Controlling Stormwater in Wisconsin: Municipal Considerations and Strategies*, by Laurie J. Kobza. Wisconsin Environmental Law Journal 2:1:1-33 (1995); phone comm. with Greg Helker, WDNR SE District, 2/7/00; phone comm. with Dave Biebel, engineer with the City of Sheboygan Department of Public Works, 1/27/00.

¹³⁰ Interview with Bob Peterson, City of Sheboygan Director of Development, 1/27/00.

¹³¹ Interview with Mike Slavney of Vandewalle & Associates, Inc., a consultant for the City of Sheboygan.

¹³² Hearing testimony of the City of Sheboygan, May 13, 1999.

¹³³ Post-Hearing Brief of the Petitioners, pg. 16.

land use map, with assistance from University of Wisconsin–Extension agent Dave Such. However, this map cannot be considered equivalent to a plan. The Town seems to harbor fundamental misunderstandings as to the roles and functions of planning and zoning. For example, on page 3 of its Reply Brief, Petitioners respond to the City’s criticism of Town planning. They say the following:

The City also alleges that the Town has deficient planning for its orderly growth and development. Petitioners disagree and point to the Town of Sheboygan Zoning map and Zoning Code... The Town has used its Zoning map and Zoning Code which have been in existence since 1968 and subsequently revised in 1979, 1991, and 1997, as its master plan for growth and development of the Town.

The Town fails to understand that zoning and planning are separate and distinct procedures. Zoning is not planning. Zoning is one of many means by which to implement a plan. A plan should be the basis for a zoning code, but a zoning code should not be the basis for a plan.

The Town does have a number of functional plans. For example, as mentioned earlier, there is the *Town of Sheboygan Sanitary District No.2 Sanitary Sewer Study* (1998), as well as *A Comprehensive Plan for Water System Improvements: Town of Sheboygan Sanitary District No.3 – Water: Sheboygan County, Wisconsin* (1992). However, there is no comprehensive plan to guide the integration and implementation of these functional plans.

Petitioners also reference the *West Side Master Street Plan* (1991) and the *Sheboygan Northside Neighborhood Plan*. However, the former is a map and not a plan, and the latter is a City plan which was never adopted.

The City alleges that whatever planning that does occur in the Town is done on a subdivision by subdivision basis, driven by each individual subdivider’s wishes, without the Town having the benefit of a comprehensive master plan for the whole community.¹³⁴ The Town has provided the Department with nothing to effectively counter this allegation.

Petitioners are fully aware of the rapid development of Town lands, as evidenced by language on page 5 of their brief.¹³⁵ Given this rapid development, one would expect the Town to be engaging in a great of planning activity to protect natural resources, as well as to ensure that development occurs most efficiently and economically. The fact that the Town is not planning, and does not anticipate planning in the future, is inconsistent with the responsibilities of an urban government.

¹³⁴ Post Hearing Brief of the City of Sheboygan, pg.13.

¹³⁵ “The testimony at the public hearings established that... agricultural usage is rapidly being converted to residential and commercial land uses. Town Exhibit No.23 summarizes that there have been twenty-three new residential subdivisions approved and constructed within the Town of Sheboygan since 1991. Multi-family residential development is also strong with 172 apartment and/or condominium units, totaling more than \$6,000,000 in construction costs, built since 1996... In addition to substantial residential growth, the Town has also issued thirty-four new commercial and industrial building permits issued since 1985, totaling \$7,638,000 in new construction. Town Exhibit No.4 points out that there has been almost \$3,000,000 in commercial building additions constructed within the Town since 1984. This substantial residential and commercial development has caused the Town of Sheboygan to be the third largest Sheboygan County municipality, as ranked by 1998 equalized valuation records.” - Petitioner’s Brief in Support of Incorporation, pg. 5.

Map 16, at Appendix A, portrays the Town's zoning classifications. The Town maintains its own zoning map and permitting process. There is no county zoning in Sheboygan County other than shoreland-floodplain-wetland zoning. The Town has had zoning for at least 20 years. The code was originally created in 1979, and revised in 1992. More revision is anticipated upon completion of the land use map being developed with assistance from UW-Extension agent Dave Such. This map attempts to translate the opinions of residents' into land use classifications.

Variance requests from the Town's zoning code are brought before the Board of Zoning Appeals. Rezoning and conditional uses are handled by the Park Commission.¹³⁶

Parks and Recreation

The City has 32 parks comprising 663 acres, as well as a bicycle trail system that leads from the downtown harbor area to areas throughout the community. The new subdivisions built on the north side of the city are linked to this bike trail system. The City's parks are a regional attraction. For example, the region's summer festivals take place on city parkland.¹³⁷ The *City of Sheboygan Park and Open Space Master Plan* (1988) inventories the City's park facilities and also recommends improvements and parcel acquisitions. This plan is currently being updated as part of a comprehensive planning effort.

The City alleges that it could develop and maintain parks in Town areas.¹³⁸ The City's Parks Department has 30 full-time employees and also hires part-time summer help. The City's 1997 budget allocated \$3,667,200 (9.5% of its total budget) to parks and recreation. Given these resources and the priority shown to parks, the Department believes that the City could effectively serve Town areas in the event that these areas are annexed.

There are no parks in the town of Sheboygan, though one of the rest stops of the regional trail system is located in the Town.

The Town is planning a 33 acre park that will include soccer fields, softball fields, tennis courts and a wildlife area. The park will be called *Rahn Park* and will be located on CTH Y, south of CTH J.

In addition to the future Rahn Park, the Town also lists as recreational opportunities Lincoln-Erdman Elementary School, Taylor Park, Farmers and Sportsmen Conservation Club, the Sheboygan Town & Country Golf Course and the Pine Hills Country Club. However, the sportsmen's club is private, as is one of the golf courses. Taylor Park is really a county park and is actually located in the City.

Although there is a park committee that meets once per month, the Town seems not to give parks and recreation much priority. There is no parks department and no parks employees. Additionally, in its 1997 budget, the Town allocated \$0.00 to parks and recreation. The Town does impose a \$200 development fee on new housing that goes to a park fund. Petitioners do not indicate how this fund is to be used for park and recreation purposes. In fact, the *Sheboygan County Comprehensive Outdoor Recreation and Open Space Plan* (1998) criticizes the Town for

¹³⁶ Hearing testimony of Sandra Gregor, town of Sheboygan administrator, 5/13/99.

¹³⁷ Hearing testimony of the City of Sheboygan, 5/13/99.

¹³⁸ Ibid.

its lack of parks, saying that the rapid growth in the Town has not been accompanied by sufficient recreation facilities.¹³⁹

Town residents have indicated that they do not need parks; that they recreate in their yards. While this may be acceptable in a rural community, it is not acceptable in an urban community. Using well-accepted standards, the County's recreation and open space plan indicates that the Town does not have sufficient parks for its population. Even if Rahn Park is developed, the Town still will not have enough park space, particularly given the anticipated growth. Because of the Town's failure to provide parks, and because of the City's demonstration of providing excellent park service, Town residents may actually be better served by the City.

Library Service

Both City and Town residents use Mead Public Library, located in downtown Sheboygan. City residents enjoy library services simply by being residents of the City. Town residents enjoy library services because of an agreement between Sheboygan County and the Eastern Shores Library System (ESLS). The City was part of this agreement because it operates a public library and participate in ESLS.

The 1997 City appropriation for Mead Public Library was \$2,469,112 or roughly \$48.40 per resident. The Town pays for Library use through the county library levy. This levy is based on use, as represented by checkouts, of all of the public libraries in ESLS by all county residents living in jurisdictions without public libraries. The tax levy for Mead Public Library attributable to the Town in 1998 was \$113,567.15 or \$22.21 per person.¹⁴⁰ Although Town residents pay less than half what City residents pay, they receive almost identical service.¹⁴¹ The Wisconsin legislature is currently studying this inequity and may propose legislation to make the system fairer for municipalities that provide library service to others.¹⁴²

Town residents make significant use of the Library. In 1998, they checked out 30,048 items and as of April, 1999, 2,492 Town residents had library cards, almost half the Town.¹⁴³

According to Sharon Winkle, Director of Mead Public Library, the library has the capacity to serve residents of the Town should Town areas be annexed to the City. This opinion is bolstered by the fact that the library already serves 50% of the Town's residents. Annexation of the Town would actually benefit the library in a number of ways. First, Town residents would pay the same for library services as City residents. Second, it would clarify confusing boundary issues. For funding and reporting purposes, the Library must accurately indicate jurisdiction of residence for all persons who register to use its services. Residence has been very difficult to ascertain in Town peninsula and island areas. Residents of these areas may not know whether they are in the Town or the City, and library staff cannot assist them because they do not know either.¹⁴⁴

¹³⁹ *Sheboygan County Comprehensive Outdoor Recreation and Open Space Plan* (1998), by Sheboygan County Planning and Resource Department, at pg. 224.

¹⁴⁰ Post-Hearing Brief of the Petitioner, pg. 15.

¹⁴¹ According to the May 4, 1999 affidavit of Sharon Winkle, Library Director of Mead Public Library, Town residents do not receive homebound delivery service or remote access to data bases on the internet, and they may also be ineligible for group programs where space is limited. Instead, City residents may be given priorities for these programs.

¹⁴² City's Reply Brief, pg. 5.

¹⁴³ Affidavit of Sharon Winkle, Director of Mead Public Library, May 4, 1999.

¹⁴⁴ Ibid.

Streets and Maintenance

A source of conflict between the Town and the City of Sheboygan has been the issue of roadway maintenance and improvements. As discussed earlier, many of these issues surround a number of roadway segments along the border of the Town and the City that are under joint-jurisdiction, as well as several roadway segments along the border where jurisdiction and adjacent land ownership is fragmented.

The Department heard testimony at hearing regarding two of these conflicts regarding attempts to coordinate improvements along Eisner Avenue and along CTH “LS”, adjacent to the Polar Ware property in the town of Sheboygan. The City testified at hearing that joint jurisdiction makes improvement of roads difficult. The City asserted that the Town’s share of improving Eisner avenue would be several times it’s annual budget for highways, which it asserted was \$100,000. In fact, as illustrated in the table below, the Town’s budget for highway construction, maintenance, administration and facilities appears to be much greater than this. The City also asserted that CTH “LS” requires pavement work and has drainage problems. However, they assert that the City cannot improve this road because the frontage of this road is in the Town and can’t be assessed. The petitioners offered testimony that the Polar Ware company, which owns the property adjacent to this road segment, has expressed their willingness to be assessed for this roadwork and, therefore, the City’s arguments are unfounded.

The town of Sheboygan does appear to dedicate a much larger percentage of its annual budget to road repair and maintenance than the city of Sheboygan. The annual expenditures for 1997 submitted to the Department of Revenue indicated that the Town spent 43.6% percent of its expenditures on highway and road related costs. In comparison, the City spent only 22.4% of its expenditures on highway and road related costs. This expenditure pattern much more closely resembles that of a rural town than that of an urban metropolitan village.

Table 10: 1997 ROAD AND HIGHWAY EXPENDITURES*

	Dollars	Percent	\$/Per Capita
T. of Sheboygan			
Highway Maintenance and Admin	306,300	11.1	49.4
Highway Construction	887,400	32.3	143.3
Road-Related Construction	6,800	.2	1.1
Totals	1,200,500	43.6	193.8
C. of Sheboygan			
Highway Maintenance and Admin	3,670,100	9.5	99.3
Highway Construction	3,517,800	9.1	95.1
Road-Related Construction	1,472,800	3.8	39.8
Totals	8,660,700	22.4	234.2

* Source: Wisconsin Department of Revenue, 1997 County and Municipal Revenues and Expenditures

The petitioners also submitted a proposed 1999 budget for the Town that anticipated a Highway Department budget of \$239,056 and an anticipated capital outlay for road/highway construction of \$900,250.¹⁴⁵

The main issues in regard to road and highway expenditures are due to the irregular boundaries, and a failure of the Town and the City of Sheboygan to effectively communicate and coordinate efforts to maintain and improve joint roadways and fragmented road segments along the boundaries. Problems include poor alignment of roads, rapid grade changes and the narrowing of lanes at the boundaries, the disappearance of shoulders and sidewalks, and a failure to undertake needed improvements and repairs

Mass Transit

The City operates the Sheboygan Transit System. The system was acquired in the early 1970s from a private owner who could no longer operate bus service at a profit. The service is a fixed-route, fixed-schedule system. The Sheboygan Transit System is led by the Director of Transit and also by the Parking and Transit Utility Commission. The Commission develops goals and objectives, monitors ridership and revenue, engages in transit planning, and establishes policy. Recommendations of the Commission are forwarded to the Common Council for final approval. The Commission is composed of nine members: the mayor, the Director of City Development, the Police Chief, three aldermen, and three citizen members.¹⁴⁶

Service is provided six days per week, Monday through Saturday. No service is provided on Sundays. Buses travel eight main routes, seven throughout the City and one which goes to the Village of Kohler and the City of Sheboygan Falls. Buses run from 5:15am to 9:45pm and a shuttle service operates from 9:45pm to 10:15pm. The fleet consists of 29 coaches, four paratransit vehicles to serve disabled people, and four service vehicles. The system's main transfer center is located across from city hall and there are also 34 bus shelters scattered throughout the City.¹⁴⁷

A plan for the Sheboygan Transit System Mass was prepared in 1998 in conjunction with the Year 2020 Sheboygan Area Transportation Plan (SATP) (1996). Both these plans were prepared under federal ISTEA regulations.

The Town of Sheboygan provides no mass transit service. The Sheboygan Transit System did offer to extend service to the Town's Highway 42 business corridor, however, the Town declined. There was interest until the Town was asked to participate financially. According to the Town Chairman, "the minute financial participation was mentioned the need for bus service was not too important."¹⁴⁸ Lack of mass transit service is particularly troublesome because of the nature of the development proposed in the Town. The large minimum lot sizes mandated by the Town's zoning code mean that development will not be compact. Development that is spread out makes pedestrian travel difficult and travel by automobile a necessity. The problem with requiring each

¹⁴⁵ 1999 Proposed Budget of the Town of Sheboygan included in materials submitted by petitioner and received by the Department on 1/14/2000.

¹⁴⁶ Sheboygan Transit Development Program (TDP) 1999-2003 (1998) by BayLake Regional Planning Commission, pg. 20.

¹⁴⁷ Sheboygan Transit Development Program (TDP) 1999-2003 (1998) by BayLake Regional Planning Commission, pg. 20.

¹⁴⁸ May 12, 1998 letter from Gerald Sampson, Town of Sheboygan Chairman, to Steve Billings, of the Sheboygan Transit System.

Town resident to have an automobile in order to move about the community is that not everyone has a drivers license or money to buy an personal vehicle. Those left behind in particular may those under 16-years and those over 65 years who no longer feel comfortable operating a vehicle. The fact that the Town offers no mass transit means that these individuals will be stranded. Adding to this dilemma is the fact that the Town does not require sidewalks in its developments, despite the urban character of development occurring east of I-43. The absence of sidewalks forces those individuals who do choose to walk into the street with the cars, making for a dangerous situation.

Determination

The City adopted and submitted to the circuit court a resolution indicating a willingness to annex and serve the area proposed for incorporation. In some cases, additional facilities may be needed, such as additional parks, or fire stations or police stations. Studies may need to be prepared on how best to provide service to Town areas west of I-43, such as for sewer and water, but it is clear that the City is physically prepared to serve Town areas East of I-43.

Another issue relating to services is the confusing boundary between Town and City for the Town territory lying east of I-43 that makes service provision difficult for both the Town and the City. Because of the Town's unwillingness to provide urban-level services (sewer, water, streets with urban cross sections and adequate lane widths, sidewalks, parks, etc.), in these areas, and because of the City's ability to provide such services, the Department finds that Petitioners have not met the Level of Services standard under §66.016(2)(b). The following paragraphs describe these conclusions in more detail and.

The following is a brief summary of the issues:

- 1) Fire protection. The confused boundaries result in duplication of service. A Town resident complained at the hearing of the inefficiency of two fire hydrants right next to each other just because one is a Town hydrant and the other a City hydrant.¹⁴⁹ Also, ironically, the day before the hearing both the City and Town fire departments were called to the same site because there was confusion over whether the parcel was within the Town or City.¹⁵⁰
- 2) Police service. Prior to the development of a computer system called *Enhanced 911* there was considerable duplication of police service. Confusion over boundaries led to both City police officers and County Sheriff's deputies arriving at the same call or the wrong department was contacted by dispatchers. The Enhanced 911 computer system has essentially solved the problem because jurisdiction may be instantly determined, even where the caller has no idea as to their government.¹⁵¹
- 3) Sanitary sewer service. Because of the 1975 agreement the Town may send its waste to the City. Therefore, neither annexation nor confused boundaries have any bearing on where sewage is sent. However, the confused boundaries do affect service rates. Rates

¹⁴⁹ Hearing testimony of Barbara Walters, Town resident, May 13, 1999.

¹⁵⁰ Hearing testimony of Tim Ellis, Town of Sheboygan volunteer fire fighter and former Town resident, May 13, 1999.

¹⁵¹ Personal communication with Tim Grasse, Inspector with the Sheboygan County Sheriff's Department, 1/27/00.

for the Town of Sheboygan Sanitary District No.2 may be different from those of the City and residents may be confused as to why one neighbor is paying one rate and while another neighbor is paying a different rate.¹⁵²

4) Water service. Both the Town and City provide their residents water service separately, with separate systems and facilities. And some Town areas are not served at all. An example is the *Tree Street* area in the northwest part of the Town. Some Town residents in this area have requested water, only to be turned down. Some try to annex to the City but cannot because they are not contiguous to the City as required by state law. As a result, they must drill their own wells even though that is not their desire.¹⁵³

5) Library Service. Library service and funding is made more difficult by the confusing boundaries because the municipal jurisdiction of the residence of all persons using library services is difficult to determine.¹⁵⁴ In addition, an undue financial burden may fall on the City of Sheboygan in this case since only residents of the City of Sheboygan pay for capital improvements to the facility.

6) Streets and Highways. The confused boundaries have perhaps the biggest impact on the roads. The fact that segments of roads are fragmented by City-Town borders, or are managed under joint jurisdiction, results in conflicting views on responsibility for road repairs.¹⁵⁵ There are also problems in continuity between Town roads and City streets. For example, as several roads alternate between Town and City jurisdiction, they undergo transition in elevation, alignment, presence and absence of sidewalks, curb, and gutter.

The Town blames the City for its irregular boundaries and yet, the Town did not have to submit the boundaries for incorporation that it did. A petition for incorporation with substantially reduced boundaries may make sense from a provision of service and level of service perspective. Such a petition may avoid tripping the question as to whether or not the Town recognizes the level of urbanization that has and is occurring east of I-43, along with a concomitant responsibility to upgrade the aforementioned services. Incorporating the Town with the current boundaries would only freeze them and forever perpetuate the problems. For example, the City is currently spending \$823,500 on stormwater management and also receives WDNR funding. According to the City's Stormwater Management Plan, expenditures are expected to rise to \$3,000,000 or \$4,000,000 annually. In contrast, the Town devotes only \$40,000 to stormwater management, which it considers a mandate as opposed to a responsibility – since Town stormwater volume and water quality directly affect the City.

From the materials received by this Department, it does not appear as if Petitioners for the Town are motivated by a desire to improve services as a reason for desiring incorporation, despite the numerous issues previously noted in this section. This is demonstrated by the fact that the proposed village budget is no different than the current Town budget. No revenue increases are anticipated, despite the fact that the Town expects the area to become increasingly urban. Petitioners admit as much in their brief, writing that “[i]t is petitioner's position that Town tax revenues and services would not substantially change post-incorporation.”¹⁵⁶ Clearly, the Town has the ability to raise revenue for increased service-levels. It is simply unwilling to do so. They

¹⁵² Personal communication with Bob Peterson, City of Sheboygan Director of Development, 1/27/00.

¹⁵³ Personal communication with Bob Peterson, City of Sheboygan Director of Development, 1/27/00.

¹⁵⁴ Affidavit of Sharon Winkle, Director of Mead Public Library, 5/4/99.

¹⁵⁵ Hearing Testimony of the City of Sheboygan, 1/27/99.

¹⁵⁶ Post-Hearing Brief of the Petitioner, pg. 14.

envision maintaining this rate while continuing to obtain public protection and other services from the City and County at a discounted rate, such as police, library services, and parks, recreation, and social and community facilities. In some service areas, the Town does provide adequate service, for example with sanitary sewer service, solid waste, and perhaps water – where it is available. However accessibility to parts of Town by road and difficulty in extending infrastructure (such as municipal water) to isolated areas and peninsulas along the boundary with the City creates problems providing certain services to these areas. Sheriff or fire services may be delayed due to an absence of direct road access or boundary confusion. At least for the area east of I-43 it makes little fiscal or practical sense to duplicate these systems in the Town at taxpayer expense. Existing City systems are in place that can efficiently serve these areas. For some service areas, such as planning and parks and recreation, the level of service provided appears to be below what is needed for an urbanizing metropolitan area. Therefore the services standard under §66.016(2)(b) is found not to be met.

Section 2(c) Impact on the Remainder of the Town

Section 66.016(2)(c), Wis. Stats., requires that the Department consider the impact upon the remainder of the town from which the territory is to be incorporated, financial and otherwise. However, this requirement does not apply here because the entire Town of Sheboygan is the subject of this incorporation proceeding; there is no remaining town land.

Section 2(d), Impact upon the Metropolitan Community

The standard to be applied is found in s. 66.016(2)(d) and is as follows:

The effect upon the future rendering of governmental services both inside the territory proposed for incorporation and elsewhere within the metropolitan community. There shall be an express finding that the proposed incorporation will not substantially hinder the solution of governmental problems affecting the metropolitan community.

The “metropolitan community” is defined in s. 66.013(2)(c), Stats., to mean;

[T]he territory consisting of any city having a population of 25,000 or more, or any two incorporated municipalities whose boundaries are within 5 miles of each other whose populations aggregate 25,000, plus all the contiguous area which has a population density of 100 or more persons per square mile, or which the department has determined on the basis of population trend and other pertinent facts will have a minimum density of 100 persons per square mile within 3 years.

The metropolitan community for this determination includes the town of Sheboygan and the city of Sheboygan, the village of Kohler, and the town of Wilson. Other potentially affected communities include the village of Howards Grove, the city of Sheboygan Falls and the towns of Mosel, Herman, and Sheboygan Falls. These communities share many of the same infrastructure systems, and natural features as the Town. This includes a regional sanitary sewer service system, overlapping school districts, and a natural drainage basin system that creates common stormwater runoff issues. Many of these communities rely on the Sheboygan and the Pigeon Rivers for recreational uses and for their natural resource and watershed protection values. The protection of these resources is a common issue. In addition, a network of highways, county and local roadways connect these communities.

The Department is obligated by statute to consider the impact of the proposed incorporation on the ability of local governments to address issues affecting the resources of the metropolitan community, and the infrastructure and services available to the residents of the metropolitan community. In addition, an examination into the legislative history also underscores the importance of considering the metropolitan impact, as indicated by the court in Westring v. James, 71 Wis.2d 462 (1975).

The legislative note attached to Assembly Bill No. 226, A, of the 1959 legislative session reads in part: ‘the impact of an incorporation on a metropolitan community must also be considered. To prevent fragmentation of an urban area the director is required to make “an express finding that the proposed incorporation will not substantially hinder the solution of governmental problems affecting the metropolitan community of which the territory is a part.”¹⁵⁷

The city of Sheboygan intervened in opposition to the proposed incorporation and filed a petition of “willingness to annex” with the circuit court. It is claiming potential harm if this incorporation is approved. The City asserts that the proposed incorporation will restrict the ability of the City to grow into its planned growth corridor to the north of the city in order to meet the needs of city residents. The Town argues that the failure of most of the potentially affected communities to file any objection to the incorporation is evidence that the incorporation will not negatively impact the metropolitan area. Petitioners argue that village of Kohler and the Towns of Mosel, Sheboygan Falls and Wilson have not filed any objection to the proposed incorporation and that the Kohler Village President and the Mosel Town Chairman appeared at the public hearing before the Department and seemed “supportive” of the petitioner’s efforts.

A “metropolitan impact standard” review includes consideration of the existence of land use plans, adopted either by the county or by neighboring jurisdiction that may suggest how the territory petitioned for incorporation would be otherwise developed and served. Existing planning implements should be reviewed for potential conflicts in the community visions reflected by these plans and potential intergovernmental service impacts triggered either by the petitioners or by neighboring jurisdictions should be identified.

The Court in Pleasant Prairie v. Local Affairs Dept., held that; “The statute is peculiarly worded, in that the incorporation can proceed only if there is a finding that it will not substantially hinder the solution of governmental problems. Obviously, this requirement for a finding places a very substantial burden on the proponent of incorporation.”¹⁵⁸

The Department must determine whether the petitioners have established that the proposed incorporation will not have a negative impact on planning, service provision, infrastructure and environmental resource protection for the metropolitan community.

In Pleasant Prairie (II) v. Local Affairs Dept., the court stated; “It must be conceded that the very strictures placed upon incorporation in metropolitan areas makes such incorporation difficult. The characteristics that naturally evolve in areas bordering upon a major metropolitan community almost dictate facts and physical circumstances that tend to give some support to a logical

¹⁵⁷ From 396-397 of the legislative note attached to Assembly Bill No. 226, A, of the 1959 legislative session and cited in Westring v. James, 71 Wis.2d 462 (1975).

¹⁵⁸ Pleasant Prairie v Local Affairs Dept., 108 Wis.2d 465 (1982), pg 481.

conclusion that the outlying areas do not have an independent viability, but a viability that is dependent upon the adjacent metropolis.”¹⁵⁹

Impact of Proposed Incorporation Upon Surrounding Municipalities

Extraterritorial issues and Municipal Plans

Where communities in a metropolitan area are engaging in urban development without established planning mechanisms and without any means to coordinate development with present and future growth in other communities in the metropolitan area, incorporation can lead to a perpetuation of inconsistent and competitive growth in the metropolitan area. The prevention of problems related to this type of growth was a significant purpose in the revisions of the state incorporation statutes in 1959. The courts considered the legislative intent of the incorporation statutes in Elmwood Park v Racine, and later in Westring v. James.

The legislature in its 1959 session made substantial changes in the statutory law governing the overall problem of municipal incorporation and urban expansion. A dominant change was a legislative recognition that many localities of the state were experiencing a substantial urban growth and that the existing legislation permitted haphazard, unrealistic, and competitive expansion without regard for present and probable future development in the best overall public interest.¹⁶⁰

The city of Sheboygan argues in its briefs and its testimony that the town of Sheboygan has not been a cooperative participant in efforts to address issues of concern to the metropolitan area. For example, the City cites the failure of the Town to voluntarily participate in the preparation of a Stormwater Management Plan, even though the study done by the City concluded that a substantial amount of the stormwater runoff into the City system comes from the Town of Sheboygan. The City also invited participation in the preparation of *The North Side Neighborhood Development Plan* and a project to replace the bridge over the Pigeon River which provides the major connecting point between the City and the Town. The town of Sheboygan ultimately declined to contribute financially to either of these projects but did engage in some level of participation in the preparation of the *North Side Neighborhood Plan*.

Examples of failure to coordinate planning can also be found in several of the border areas between the City and the Town. The Department noted in a visual inspection of the border area that jointly maintained roads in the boundary area are unevenly graded and can drop several feet in elevation at the boundary. Lane widths also change suddenly in several places and the roads in many of these areas are inadequate for the traffic flow and the land uses abutting the road. For example, students who attend Mann middle school need to walk up a hill on Georgia Avenue, in the town of Sheboygan, that has no separated walkway to ensure the safety of pedestrians. Uncoordinated planning and inadequate facilities affect the ability of these communities to provide fire and safety services to the businesses and residences in these areas and to allow circulation through these areas by residents, shoppers and travelers. These joint City/Town roadways (Washington Ave., Union Ave., Georgia Ave., Erie Ave., Superior Ave., Main Ave. and Eisner Ave.) include many of the main points of access to the city of Sheboygan

¹⁵⁹ Pleasant Prairie (II) v. Local Affairs Dept., 113 Wis.2d 327 (1983), pg. 333.

¹⁶⁰ Elmwood Park v. Racine, 29 Wis.2d 400 (1966), and Westring v. James, 71 Wis.2d 462 (1975).

A similar failure to coordinate joint efforts to provide planning, regulation and services for border areas was also identified by the Department in the Brookfield determination. The Department held that this failure to coordinate efforts had a negative impact on the development of the Capital Drive Corridor, which serves as a gateway to the city of Brookfield from the Town of Brookfield territory to the north;

The City of Brookfield prepared a Capitol Drive Corridor Study Number Two to establish a vision and determine appropriate regulatory devices for the future of Capitol Drive. The Town of Brookfield has just now entered into its own, independent planning process for this corridor. While both the Town and the City invited the participation of the other in the planning process, these two plans have been poorly linked. The uncoordinated planning of this area has resulted in inconsistent standards.¹⁶¹

The former Town Chair, Gerald Sampson, testified that bad land use decisions along the border of the City and Town has resulted from competitive pressures. He recounted that a 164-Unit manufactured home development was originally turned down by the Town because of objections from neighboring residents and because it did not meet current zoning requirements. This project was later approved after the developer threatened to petition for annexation to the City. The Petitioners assert that incorporation would allow them to implement good planning and land use policies without fear of annexation. However, as the City's brief notes; "the Town should be implementing good planning and land use policies without regard to whether the property is on the fringe of the township or not."¹⁶² In order to meet the requirements of s. 66.016(2)(d), the petitioners need to demonstrate that established land use planning and controls exist that are consistent with the rest of the metropolitan area. It is not sufficient to suggest that incorporation will make such land use mechanisms possible in the future.

The petitioners argue that examples of its cooperation in planning efforts in the metropolitan area include its implementation of recommendations in the *Year 2020 Sheboygan Area Transportation Plan* (SATP). Petitioners point to projects such as bike path and shoulder improvements on CTH "LS" and the planning of an east-west connector street between Dairyland road and CTH "LS" which the Town undertook to implement the SATP.

The Town's development certainly has an impact on stormwater runoff because the Town is anticipating converting open fields, wood areas, and wetlands to roof tops, streets, and parking lots, all of which increase both the speed and quantity of runoff. Whereas natural areas hold water and slow it down, urban areas do the opposite. The City testified that the Town declined to participate in the preparation of a Stormwater Management Plan that included an assessment of runoff from Town territory. Because of these effects, one would have expected the Town to participate in this planning process and help fund it. Doing so is what any good regional partner would do. The Town asserts that it has acted cooperatively by entering into an agreement with the village of Kohler and the towns of Wilson and Sheboygan Falls to jointly apply for a storm water runoff permit. However, the city of Sheboygan noted in its testimony that this agreement was basically required under the Department of Natural Resources' administrative rules, NR 216. In addition, this agreement does not address the failure of the Town to cooperate in identifying and addressing storm water runoff issues from Town territory on the city of Sheboygan system.

¹⁶¹ Wisconsin Department of Administration, Brookfield determination (1999), pg. 71.

¹⁶² Reply Brief of the City of Sheboygan (pg. 3).

Incorporation of the proposed area would also be inconsistent with planning activity and projects undertaken by the city of Sheboygan to prepare for development in the area north of the City as a future growth corridor. The city has paid to extend water mains across the Pigeon River along Lake Shore and Mill Roads and has the infrastructure to provide sanitary sewer service to the entire town territory. In addition, the *North Side Neighborhood Plan* and the City's draft Planned Land Use Map (Exhibit C-11) directs future growth and development to the north of the City.

Services

The Petitioners assert that, "The incorporation will not have a negative effect upon the future rendering of governmental services both inside the territory proposed for incorporation and elsewhere within the metropolitan community. The proposed incorporation will not substantially hinder the solution of governmental problems affecting the metropolitan community."¹⁶³

However, testimony was given by both sides at the public hearing that demonstrates how poor intergovernmental cooperation and competing land uses has caused conflicts and difficulties in attempts to provide services to Town residents. The former Town Chair, Gerald Sampson noted that annexation of the "Ashwabac" property to the city of Sheboygan resulted in the town of Sheboygan having to spend an extra \$70,000 to extend water to a subdivision adjacent to the property when the City denied permission to lay pipe through the Ashwabac property. In its Brookfield determination, the Department examined the issue of intergovernmental cooperation and noted the following:

The history of efforts to deal with service issues between the Town of Brookfield and its neighbors have resulted in several examples of redundant or inconsistent service provision to residents in the territory, inconsistent zoning and land uses, as well as inconsistent standards for site and roadway development, between the Town and bordering communities... There is a history of isolated planning that results in poor inter-municipal relationships.¹⁶⁴

Incorporation will also impact a number of agreements the City has with landowners in the Town. The City testified at hearing regarding agreements with landowners to extend City water in return for a landowners agreement to annex into the City in a certain number of years.

The current boundaries of the proposed incorporated area results in unnecessary duplication of facilities, equipment and other costs to provide fire and other services to the area. It appears that, for many services, the territory would be more efficiently served by the City. The petitioners testified that the current water system in the Town provides water services to only 800 residents. The City has submitted sufficient evidence to establish that it has the necessary infrastructure and urban planning, service (including library service), and administrative mechanisms in place to provide services to the Town territory if it were attached to the City. An affidavit by Joe Trueblood, Superintendent of the Sheboygan Water Utility, stated that "It is possible, depending on the amount of investment necessary, that the utility could supply water more cheaply to the Town than the Town's present rate structure."¹⁶⁵ Lloyd Turner, the City Public Works Director, also testified that the City has the capacity to provide a level of services to Town residents commensurate with the City. Mr. Turner testified that the City has the capacity to develop parks

¹⁶³ Petition for Incorporation of the Town of Sheboygan, pg. 2.

¹⁶⁴ Brookfield.

¹⁶⁵ Trueblood Affidavit, pg 2. Exhibit C-7.

in the town, provide solid waste pick-up and continue to accept sewage from the town without a significant impact on the treatment plant capacity. The City also noted that a new fire station was built at 15th Street and Main to provide protection for north-side property.

The petitioners argue that they should not be punished because of irregular boundaries caused by annexation to the City. Nevertheless, the current petition for incorporation of the entire town of Sheboygan includes the current irregular boundaries with the City and would fix these boundaries permanently. Petitioners offered testimony at the public hearing that demonstrates how boundary confusion has led to duplicate responses by the City and Town to emergency calls. Tim Ellis, secretary-treasurer of the Town fire department testified that both the City and the Town sent fire trucks to a call to a Town peninsula area the day before the public hearing. The Department dealt with similar issues regarding irregular boundaries in its Brookfield decision. The Department found that the “metropolitan impact” standard was not met in Brookfield in part because fragmentation and irregular boundaries contributed to difficulties in providing services to residents within the metropolitan area. The Department stated that;

Both the City of Brookfield and the City of Waukesha, as intervenors, expressed concerns regarding the jurisdictional confusion in the provision of police, fire and safety services to the current Town territory because of the fragmentation and irregular boundaries that exist in the current Town. Permanently fixing these boundaries by incorporation would make it more difficult and further limit the options available to deal with these issues.¹⁶⁶

In their brief in opposition to the proposed incorporation the city argues that the irregularity of the proposed boundaries prevents the Town government from meeting the need for government services by residents of town territory that are physically or functionally isolated from the remainder of the town.

Even the Town officials admit that there are numerous areas of the existing Town that they are unable, due to high costs and isolation from existing facilities, to provide utility service to, in particular, municipal water service. These are, by and large, the same areas identified above as the territory which would become permanently isolated from the remainder of the village if the incorporation was approved. All of these identified areas could readily be serviced by the City of Sheboygan.¹⁶⁷

The City asserted at hearing that residents along Eisner Avenue have requested to be hooked up to Town water services as a result of failing wells. They assert that the Town is either unwilling or unable to provide water service to this area of the town and testified that they are readily able to provide city water to residences and businesses along Eisner Avenue.

The city of Sheboygan testified that the existing irregular boundaries resulted in confusion and difficulty in providing such services as accurate property assessments. The City submitted an affidavit by Marie Ellis, the City Assessor, stating that; “Due to the existing boundaries between the City of Sheboygan and the Town of Sheboygan, it is difficult working with the assessment

¹⁶⁶ Brookfield, pg. 73.

¹⁶⁷ Post-Hearing brief of the City of Sheboygan, pg. 12.

maps. Many of our customers are confused as to where the city/town boundary lies. If the existing boundary is locked in permanently there would continued confusion.”¹⁶⁸

The affidavit submitted by the City Assessor also asserts that the proposed incorporation would have a negative impact on property values in the city of Sheboygan. She states that; “The incorporation of the Town of Sheboygan would have a significant impact on the future growth of the City of Sheboygan. The proposed boundaries would limit any new construction due to the lack of expandable land area. This will result in stagnation, deterioration of properties, and a decline in property valuation. A declining tax base will cause an increase in property taxes. Therefore, the incorporation, as proposed, will impact negatively on the City of Sheboygan.”¹⁶⁹

Determination

The issues facing the parties in this petition are very similar to those facing the parties in the Brookfield determination, in which the Department concluded that the requirements of the “metropolitan impact standard” were not met. The Department stated that;

The major difficulties relating to the effect of incorporation on the metropolitan area, are due to the fragmented nature of the 7 areas of the proposed village limits. This fragmentation raises the issue of the ability of the regional transportation system to adequately connect the different segments of the proposed village, and a fiscal equity consideration as to whether they should connect these disparate parts. Residential developments in the central and northern segments of the proposed village have better access to services and resources in the Cities of Brookfield or Waukesha than to those resources available in the southern section of the Town. These fragments also result in inconsistent land use and planning efforts along major transportation corridors where multiple jurisdictions exercise control over fragmented corridor sections and where there is a failure to cooperatively plan for the urban design and regulation of these areas which fall within multiple jurisdictions.¹⁷⁰

Similar issues face the parties this determination. The irregular boundaries in the current petition have also resulted in problems related to joint planning and regulation along major transportation corridors where jurisdiction is fragmented or that are under joint-jurisdiction. Sections of the Town are not directly accessible from the remainder of the Town without reliance on City or County roads. Much of the Town east of USH 43 has easier access and more strongly relates to the City for services and resources than it does to the western portion of the Town.

In the Weston determination, the Department stated that; “The question which should be asked is whether the level of services, quality of planning, and existing ordinances of the city of Schofield could apply to territory of the town of Weston, and conversely, are these systems – which arguably could be said to tangentially affect the metropolitan area - likely to be adversely affected if incorporation occurs.” (Weston, 1996). In this case, the city of Sheboygan has submitted a resolution of willingness to annex the proposed incorporated area. The Department concludes that the information submitted by the city of Sheboygan has established the ability of the city to effectively provide an appropriate level of municipal services to the entire Town area. The

¹⁶⁸ Affidavit of Marie Ellis, Assessor. City of Sheboygan. May 10, 1999.

¹⁶⁹ Ibid.

¹⁷⁰ Brookfield, pg. 73.

Department has also concluded that incorporation of the current boundaries would negatively affect the resolution of problems facing the metropolitan community, including the metropolitan transportation system, inconsistent and conflicting land use planning and ordinances, and the provision of water and other metropolitan services to residents in portions of the metropolitan area.

The Town does not appear ready to acknowledge that the rapid urbanization in the proposed incorporated area creates a critical need to address issues regarding the relationship of itself to its principle neighboring municipality with respect to provision of services, infrastructure, and planning for development. Issues that the petitioners have not adequately addressed include the adequacy of Town roads and the regional transportation system, an increased need for municipal water in certain areas of the town (despite apparent excess capacity), and natural resource protection. The Town needs to develop planning and implementation programs for urban development, infrastructure for all land uses and providing services that are consistent with neighboring jurisdictions in the metropolitan community.

Discussion of the foregoing issues raises the question of whether, as part of the bundle of prospective home rule powers, the Town should be afforded the ability to annex into surrounding unincorporated territory (namely the towns of Wilson, Mosel and Sheboygan Falls). The answer, given the Town's current level of planning and regulation, service provision and infrastructure, is --advisedly-- not yet. Although the Town cites support from the village of Kohler, we believe the prospective effect of incorporation upon the village would be minimal in contrast to the effect upon the core city of the region. However, the support is indicative of what could be the case if substantially different territory were proposed for incorporation by the Town , and if the Town were to address existing service and regulatory deficiencies, noted herein, through the development of technically adequate plans, ordinances, and capital budgets.

The Department determines that it cannot find that "the proposed incorporation will not substantially hinder the solution of governmental problems affecting the metropolitan community," and that, therefor, this criterion is not met.

NOTICE OF APPEAL INFORMATION

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

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

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

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

This notice is part of the decision and incorporated therein.

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

227.49 Petitions for rehearing in contested cases.

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

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

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

(a) Some material error of law.

(b) Some material error of fact.

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

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

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

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

227.49 - ANNOT.

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

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

227.53 Parties and proceedings for review.

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

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

2. Unless a rehearing is requested under s. 227.49, petitions for review under this paragraph shall be served and filed within 30 days after the service of the decision of the agency upon all parties under s. 227.48. If a rehearing is requested under s. 227.49, any party desiring judicial review shall serve and file a petition for review within 30 days

after service of the order finally disposing of the application for rehearing, or within 30 days after the final disposition by operation of law of any such application for rehearing. The 30-day period for serving and filing a petition under this paragraph commences on the day after personal service or mailing of the decision by the agency.

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

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

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

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

(d) The agency (except in the case of the tax appeals commission and the banking review board, the credit union review board, the savings and loan review board and the

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

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

227.53 - ANNOT.

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

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

ACKNOWLEDGEMENTS

I would like to gratefully acknowledge the research and drafting assistance provided by Municipal Boundary Review personnel Robert Zeinemann, Laura Yaffe,, and Erich Schmidtke who persevered during many long hours despite the constant distractions of approximately 15 pending incorporations, analysis of pending legislation, the review of intergovernmental agreements and other assigned duties. Robert Zeinemann and I were present during the Town of Sheboygan legislative hearing in May, 1999, and Laura Yaffe and Erich Schmidtke reviewed the hearing tapes. All of these individuals have participated in site visits to the territory proposed for incorporation, or are otherwise familiar with the territory and region.




George Hall, Director
Municipal Boundary Review

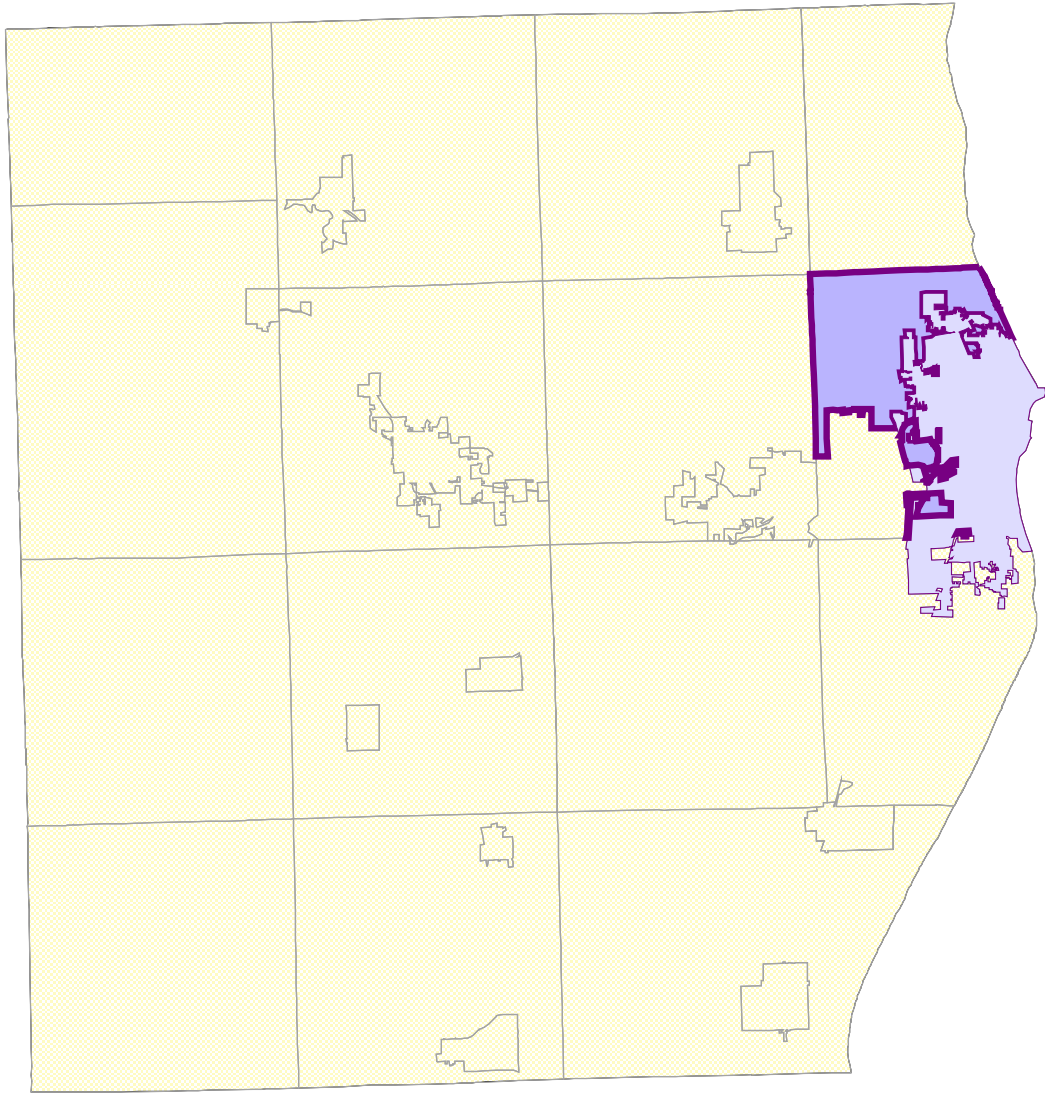
APPENDIX A

MAPS

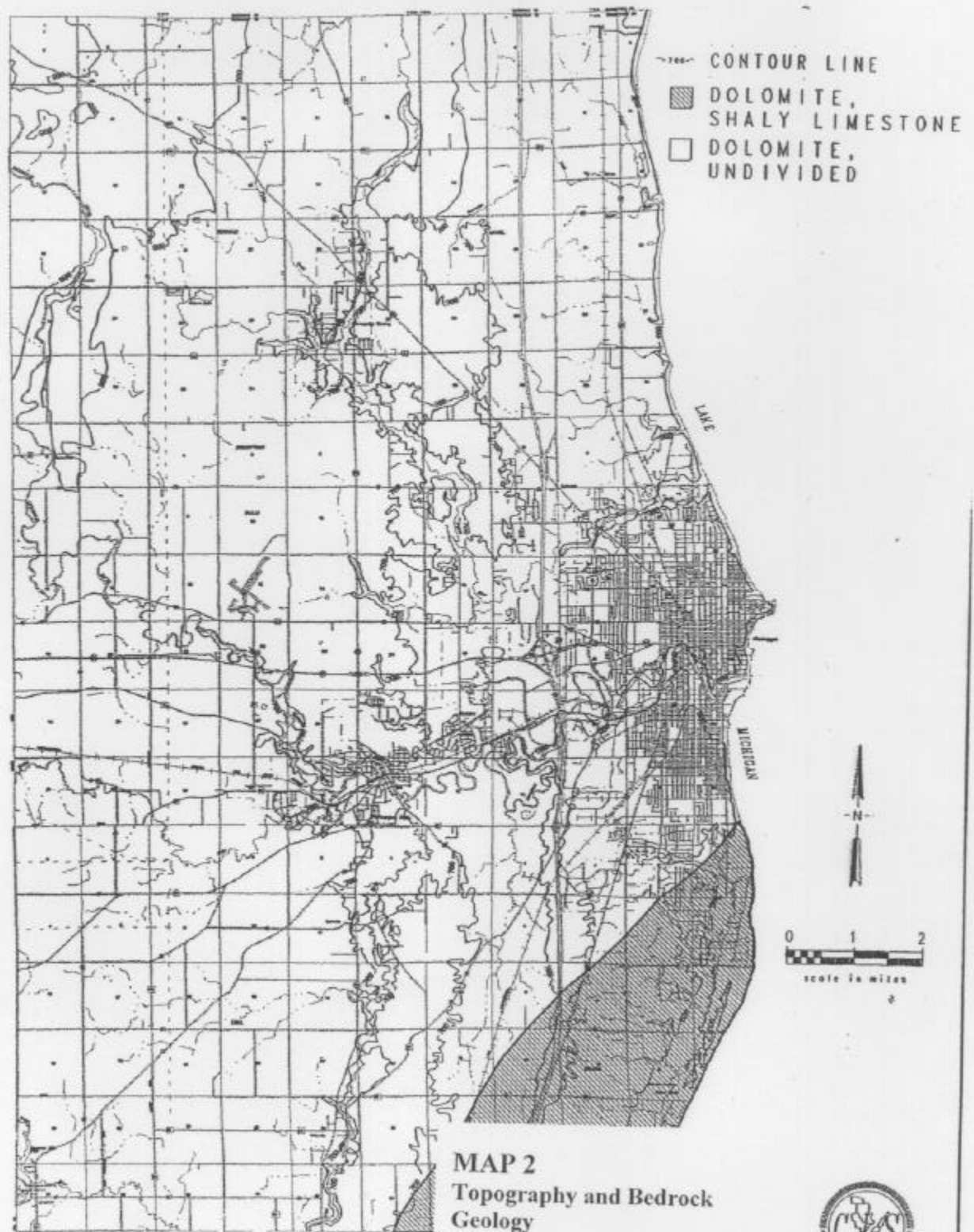
Sheboygan County

Map 1:
County, City and Town
of Sheboygan

-  Township of Sheboygan
-  City of Sheboygan
-  Minor Civil Divisions



Topography and Bedrock Geology

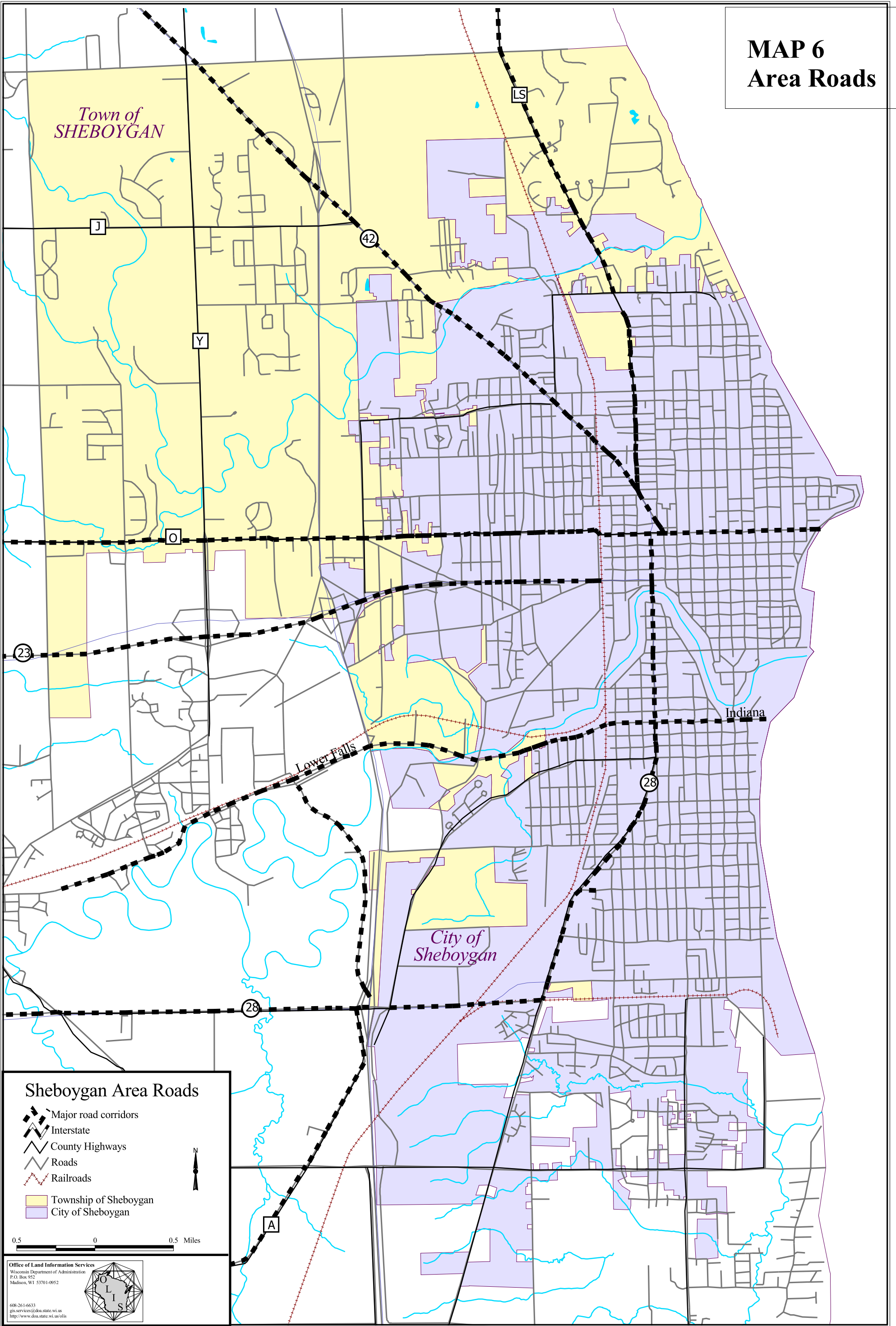


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Project: Base - SHEBEXTB(650); Layers - BEDGEO(), CONTOUR()
Extract: 52011
SOURCE: USGS, 1986; Wisconsin Geological and Natural History Survey, 582; BLRPG, 1995.



Date Plotted: 11/30/95

MAP 6 Area Roads



Sheboygan Area Roads

- Major road corridors
- Interstate
- County Highways
- Roads
- Railroads
- Township of Sheboygan
- City of Sheboygan

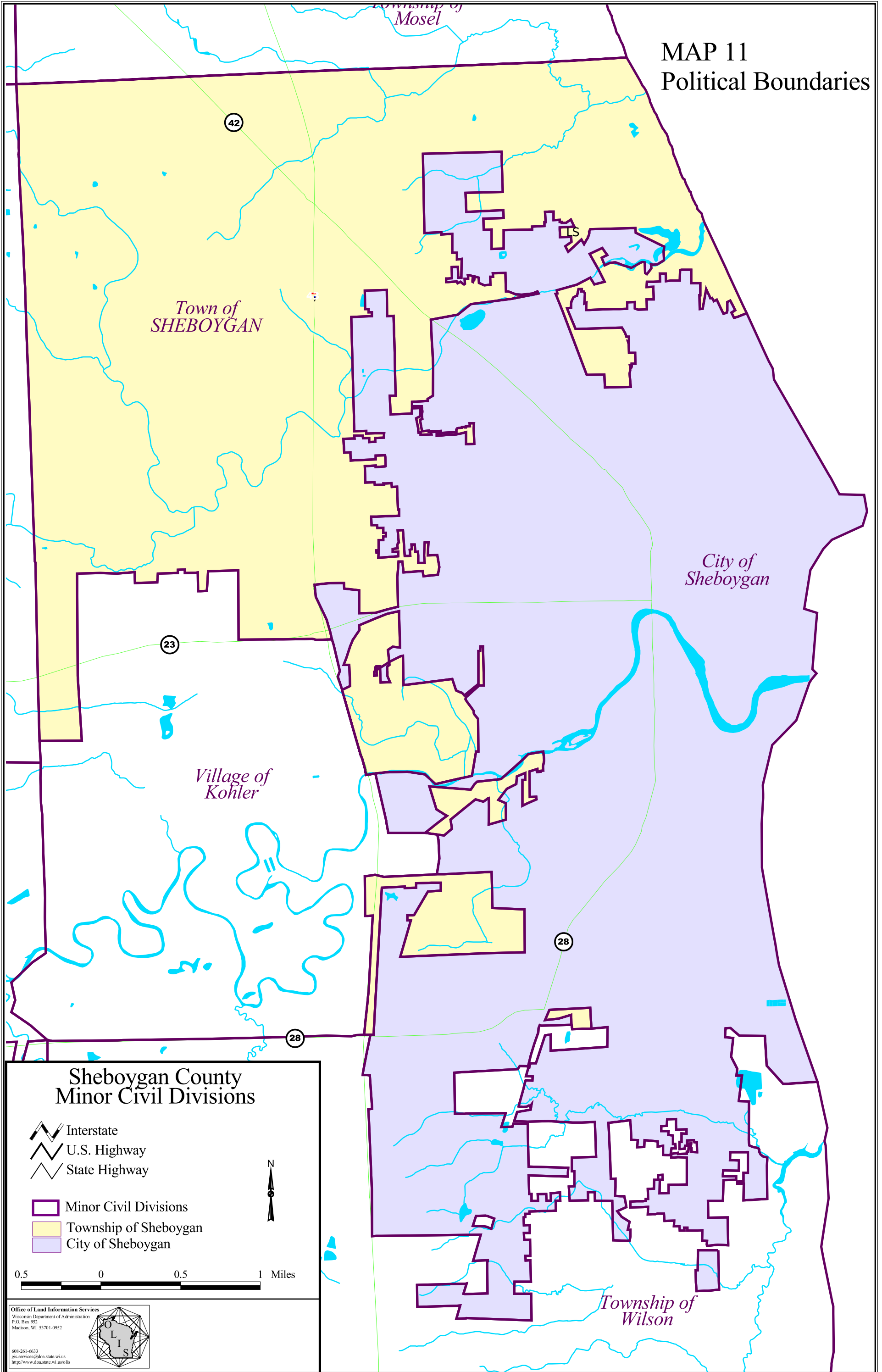


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 Wisconsin Department of Administration
 P.O. Box 952
 Madison, WI 53701-0952

608-261-6633
 gis.services@dhs.state.wi.us
 http://www.dhs.state.wi.us/olis

MAP 11
Political Boundaries



Sheboygan County
Minor Civil Divisions

- Interstate
- U.S. Highway
- State Highway

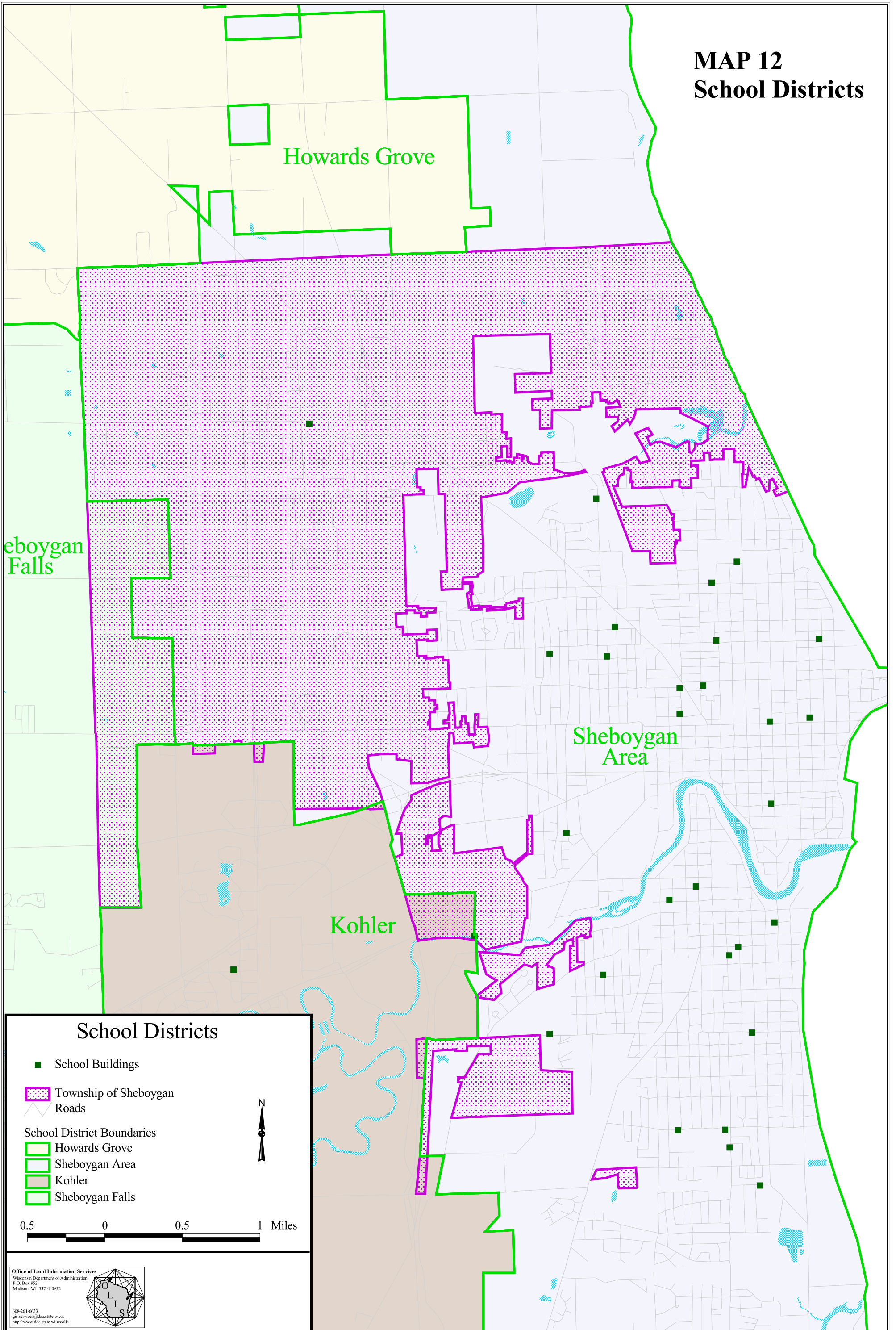
- Minor Civil Divisions
- Township of Sheboygan
- City of Sheboygan

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Madison, WI 53701-0952

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MAP 12 School Districts



Howards Grove

Sheboygan Falls

Sheboygan Area

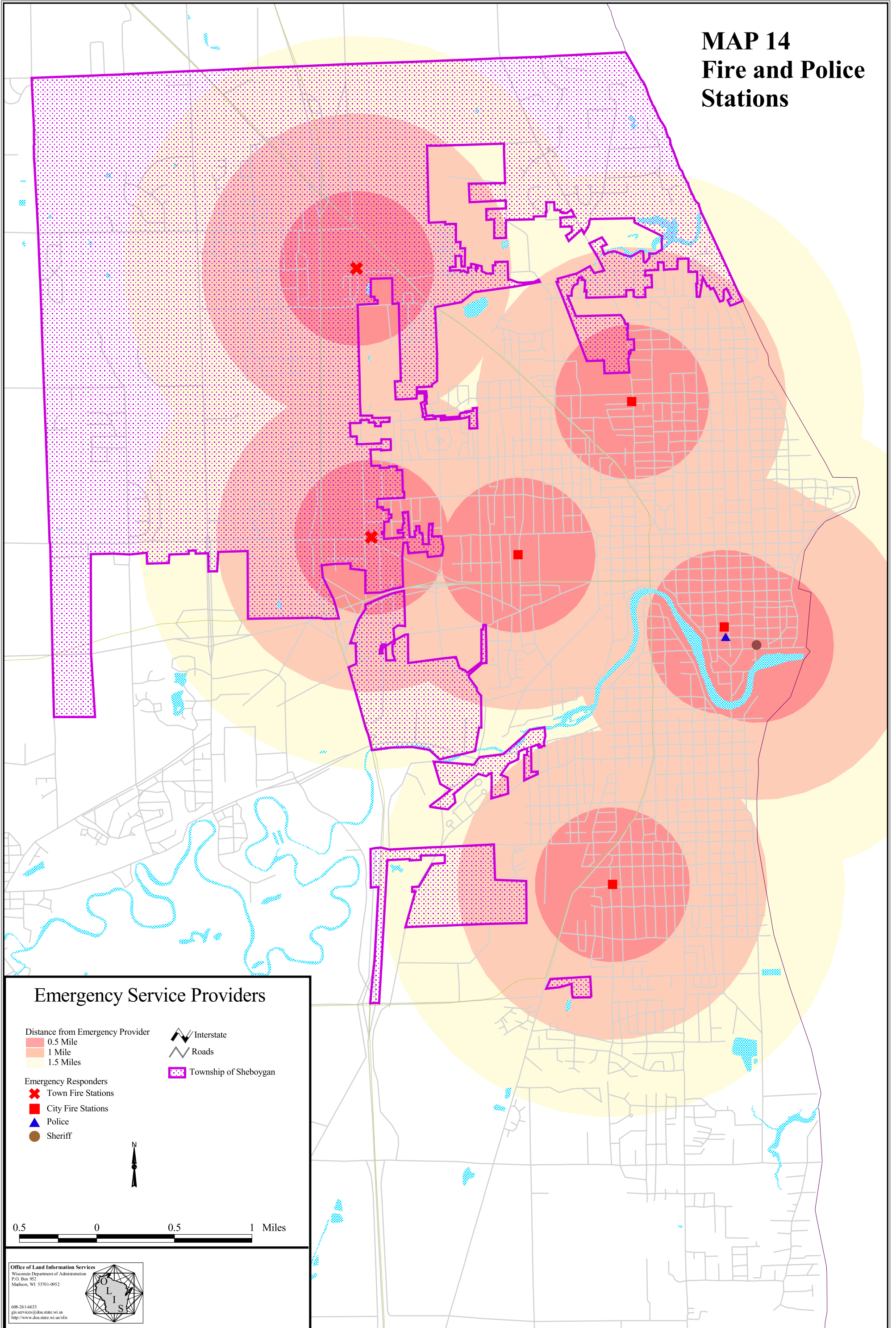
Kohler

School Districts

- School Buildings
- ▨ Township of Sheboygan
- ∟ Roads
- School District Boundaries
 - ▭ Howards Grove
 - ▭ Sheboygan Area
 - ▭ Kohler
 - ▭ Sheboygan Falls

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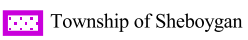
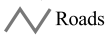
MAP 14 Fire and Police Stations



Emergency Service Providers

Distance from Emergency Provider

- 0.5 Mile
- 1 Mile
- 1.5 Miles



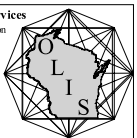
Emergency Responders

- Town Fire Stations
- City Fire Stations
- Police
- Sheriff



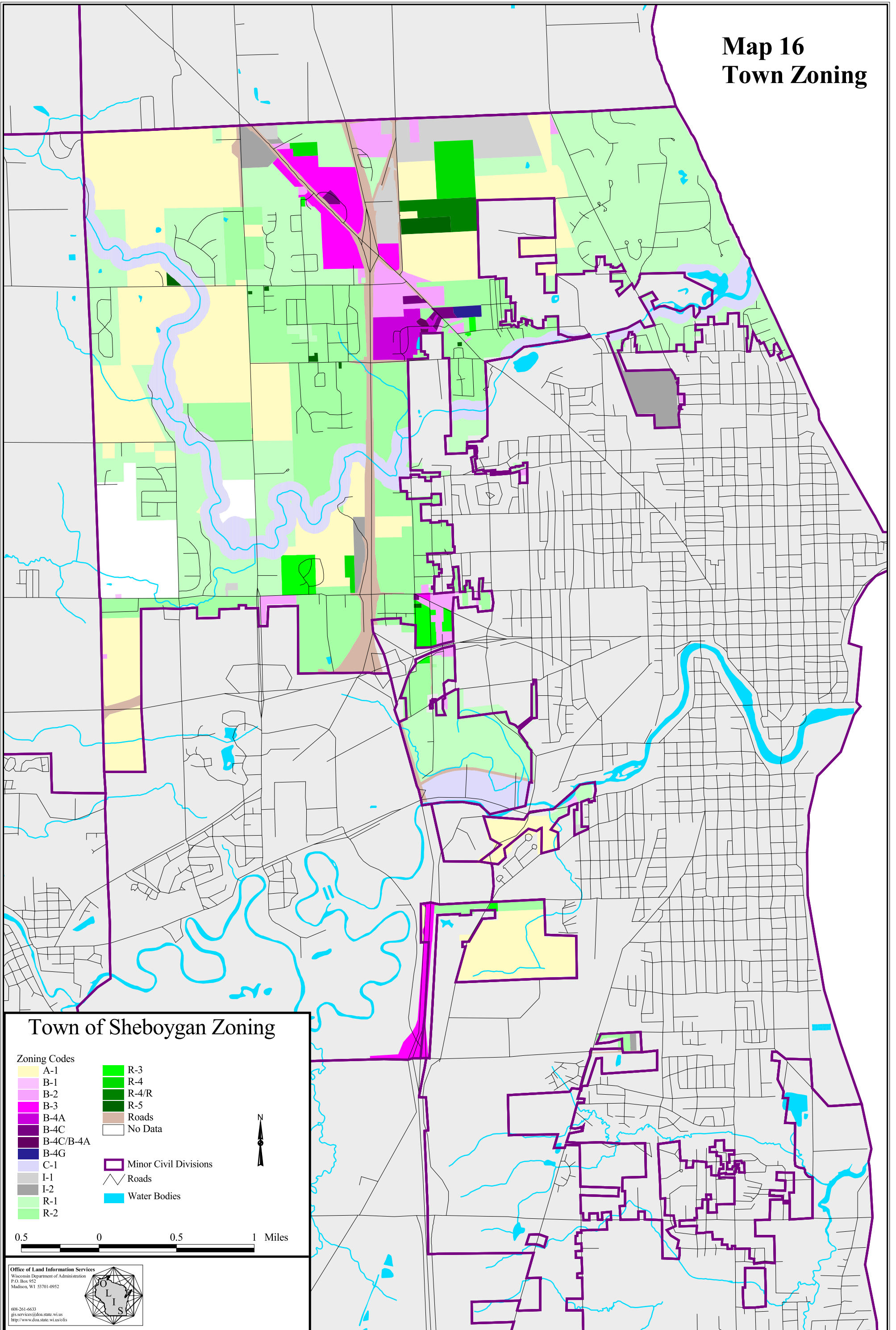
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Map 16 Town Zoning



Town of Sheboygan Zoning

- Zoning Codes**
- A-1
 - B-1
 - B-2
 - B-3
 - B-4A
 - B-4C
 - B-4G
 - C-1
 - I-1
 - I-2
 - R-1
 - R-2
 - R-3
 - R-4
 - R-4/R
 - R-5
 - Roads
 - No Data
 - Minor Civil Divisions
 - Roads
 - Water Bodies



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APPENDIX B

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* Although not all of these items are cited directly in footnotes within the text, they should be considered part of the record of decision in this matter, as they form the background so necessary to considering the situs, structure, and intergovernmental relationships within the region. This list does not include materials submitted to the department and all parties as a listed exhibit at the public hearing held May 12-13, 1999

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

Michael J. Bauer, Attorney for the Petitioners.

Dave Biebel, Engineer for the City of Sheboygan Department of Public Works. January 27, 2000.

Cathy Bleser, Bureau of Endangered Resources, WI Department of Natural Resources. January 9, 2000.

Chip Brown III, State Compliance Coordinator, Division of Historic Preservation, State Historical Society of Wisconsin. January 24, 2000.

Doug Dalton, WI Department of Transportation. January, 2000.

Robert Englander, Business Manager, Sheboygan Falls School District. January 10, 2000.

Inspector Tim Grasse, Sheboygan County Sheriff's Department. January and February, 2000.

Jim Guidry, WI Department of Revenue. February 7, 2000.

Carol Holfeltz, Town of Sheboygan Clerk. January 2000.

Stacy Karbe, Sheboygan County Emergency Management Director. January 18, 2000.

Debbie Lauersdorf, Census Secretary, Sheboygan Area School District. January 24, 2000.

Bob Peterson, City of Sheboygan Director of Development. January 17, 2000.

Steve Stauber, Community Recreation Department, Sheboygan Area School District. January 4, 2000.

Kevin Struck, GIS Specialist, Sheboygan County Planning Department. January 14, 2000.

Lloyd Turner, Department of Public Works, City of Sheboygan. February 7, 2000.

Bill Walter, Sheboygan School District. December 23, 1999.

Mark Walter, GIS Coordinator, Bay-Lake Regional Planning Commission. February 1, 2000, February 6, 2000.