
STATE OF WISCONSIN CIRCUIT COURT RACINE COUNTY

In Re:

THE PETITION TO CONSOLIDATE THE
VILLAGE OF ROCHESTER AND TOWN OF
ROCHESTER INTO AN INCORPORATED
VILLAGE OR FOURTH CLASS CITY

Case No. 02-CV-0691

DETERMINATION OF THE WISCONSIN DEPARTMENT OF ADMINISTRATION

July 7, 2004

It is the function of the Department of Administration, henceforth referred to as the Department, to prepare findings and to make a determination as to whether the territory petitioned for incorporation meets the applicable standards prescribed in s. 66.0207, 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 s. 66.0207, 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 applicable

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 the body of the Determination. The Determination of the Department to the Circuit Court, as prescribed by ss. 66.0229 and 66.0203, Wis. Stats., is as follows:

Having considered the applicable standards for consolidation as set forth in s. 66.0207, Wis. Stats., the Department finds that the petition as submitted is denied.

Dated this 7th day of July, 2004

By the Wisconsin Department of Administration:

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Administrator, Division of Intergovernmental
Relations

George Hall
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cc.

The Honorable Judge Charles Constantine, Racine
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EXECUTIVE SUMMARY

The Town and Village of Rochester have petitioned to consolidate all of their territories to create a new village with a combined area of 17.7 square miles and a population of 3,403 persons. Their reasons for wanting to consolidate include merging of duplicated services, greater service provision and efficiency, better decision-making in areas of mutual concern, greater ability to shape land use and development, greater ability to attract economic development, a larger and more diverse pool of citizens to fill elected and appointed local government positions, and a greater feeling of overall unity. The Town and Village already cooperate on a wide range of services and issues. For example, they share a municipal building and a clerk. To build on the existing cooperation and accomplish the ultimate in intergovernmental cooperation, the Town and Village desire to become one municipality.

Wisconsin statutes provide two methods or approaches for municipal consolidation, one under section 66.0229 of the statutes and the other under section 66.0230. The Town and Village of Rochester chose to attempt consolidation using the first method. The 66.0229 method involves the local governing bodies, a circuit court, the Department of Administration ('Department'), and a referendum vote of area residents. The process begins with each governing body passing by two-thirds vote a consolidation ordinance. The circuit court then reviews certain requirements and if these are met, it refers the petition to the Department to conduct a public interest review based on statutory standards. If the Department finds these public interest standards met, then the circuit court orders that a referendum be held. If a majority of residents vote in favor, then the two jurisdictions become consolidated.

Having found that Rochester's petition met the basic statutory requirements, the circuit court referred the petition to the Department. This document is the Department's Findings and Determination on deciding if the petition meets the public interest standards for a consolidation under section 66.0229. The Department concludes that the petition fails to meet two of these standards – 'compactness and homogeneity' and 'metropolitan impact' - and must therefore be dismissed by the circuit court. Specifically, the Department finds the following key problems:

- The public interest standards require that territory to be consolidated be urban in nature rather than rural. The Village of Rochester consists of 884 acres of urban development, however, the Town of Rochester's 10,459 acres are primarily rural. The addition of so much rural land to the village means that a consolidated Rochester would be a rural community. It would be one of the largest and most sparsely populated villages in Wisconsin, and not really a village as the term is generally understood, or as the term was understood by the Legislature when it enacted 66.0229 in 1959.
- The 'substantial development within 3 years' standard requires that rural land included in a consolidation petition is developable within three years. Considering market forces, development trends, regulations, etc. Rochester's extensive amount of vacant developable lands (5,000 acres) and past and current development trends indicate that this standard cannot be met.
- School district boundaries divide the territory proposed for consolidation between the Village of Waterford and City of Burlington resulting in fragmented allegiance of families with school-age children. These families may feel more a part of Burlington and Waterford than Rochester.
- Shopping and social customs relate more to the larger metropolitan area. For example, Town and Village of Rochester residents appear to drive to Burlington or Waterford for their retail needs. Rochester's retail opportunities are seasonal in nature like those of many developing resort communities.

- There are no intergovernmental agreements or plans with adjoining jurisdictions that address area land use and development issues. This means that the Department cannot find that consolidation will not hinder the resolution of regional issues. In the absence of such intergovernmental agreements, Rochester's low level of taxation, services, and regulation, and the fact that it would be free of county oversight, may all work against the interests of neighboring jurisdictions.

This Findings and Determination document is organized into sections - a section for each public interest standard – that discuss and analyze at length the problems listed above.

The Department commends the Town and Village on their hard work in researching and studying consolidation and assembling materials in support of their petition. The Department also commends the Town and Village on their desire to improve the quality of life for their residents by increasing service provision and efficiency, eliminating duplication of services, attracting economic development, and all the other benefits that can result from consolidation. However, the consolidation method pursued by petitioners under section 66.0229 includes standards that must be met and roughly 40 years of well-developed case law and Departmental precedent that must be followed. Because of this, the problems listed above are fatal to this petition. Therefore, despite the fact that consolidation can have many benefits for area residents, the region, and the state, it cannot be approved under this statutory method.

Consolidation of the Town and Village of Rochester may be more successful using the second consolidation method - section 66.0230. This method is the result of a consensus effort involving the Wisconsin Towns Association, The League of Wisconsin Municipalities, the Wisconsin Alliance of Cities, and the Wisconsin Counties Association, and led by State Representative Bonnie Ladwig. The method was enacted by Governor Jim Doyle as 2003 Wisconsin Act 93, and took effect on December 3, 2003. This method requires 2/3 approval by the governing bodies of each consolidating jurisdiction, adoption by the governing bodies of identical resolutions spelling out how services will be provided and how municipal buildings will be shared, a referendum vote of residents in favor of consolidation, development of a comprehensive plan for the consolidated city or village, and development of boundary agreements with each of the jurisdictions that border the consolidated city or village. Unlike the consolidation method under 66.0229, no public interest review by the state is required. No communities in Wisconsin have yet utilized this consolidation method. The Department previously provided the Town and Village of Rochester with information about this method and offered its assistance.

Another route for the Town and Village of Rochester to accomplish consolidated boundaries, service sharing, agricultural preservation, and other mutual goals is through use of a cooperative boundary agreement under section 66.0307 of the Wisconsin statutes. For example, a cooperative boundary agreement could be developed to transfer Town of Rochester territory to the Village of Rochester in phases. The Department also provided petitioners with information about cooperative boundary agreements and offered its assistance in developing one.

Consolidation is a worthwhile innovation that has been infrequently used in Wisconsin. Rochester's effort was only the second consolidation attempt over the past 40 years. Incorporation, the creation of new cities and villages from town territory, has been much more common.¹ The Department fully supports consolidation attempts that meet the statutory requirements.

¹ In the past 40 years there have been approximately 70 efforts to incorporate with about 30 of these being successful. Of the approximately 40 efforts that were unsuccessful, some were denied by the Department while others were rejected by area residents in the referendum vote.

SECTION 1(A) HOMOGENEITY AND COMPACTNESS

The standard to be applied is found in s. 66.0207(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*² also allows the Department to consider land-use patterns, population density, employment patterns, recreation and health care customs.³ 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/consolidation 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. Determinations of the Department (since the 1980s) describe in detail the reasons for finding whether or not an incorporation/consolidation criterion is met or not met.

Physical and Natural Boundaries

Topography

The topography of the Town and Village of Rochester ranges from nearly level in some areas, to gently rolling to hilly in others as can be seen in Department Map 2 in Appendix B.

Physical boundaries

The Town and Village of Rochester are located in the northwestern corner of Racine County. The Village of Rochester is nearly surrounded by the Town of Rochester, except for a small portion that shares a border with the Village of Waterford. The Town of Rochester is bounded to the east by the Town of Dover (Racine County), to the south by the Town of Burlington, to the west by the Town of Spring Prairie (Walworth County), and to the north by the Town and Village of Waterford (in Racine County). The Village of Waterford extends into previous Town of Rochester territory due to a series of annexations. Nearby communities include the Village of Waterford to the North, the City of Burlington to the south, and the Village of East Troy to the Northwest. The Town and Village of Rochester are part of the Racine Metropolitan Statistical Area. The Town of Rochester was platted with only 18 sections, making it about half the original size of most Wisconsin towns.⁴ Map 1 Rochester Consolidation Area, Appendix B shows the Town and Village and surrounding communities.

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

³ *Ibid*, at pg. 337.

⁴ Town and Village of Rochester Consolidation Report, page 7.

Watersheds and Drainage Basins

The Town and Village lie entirely in the Fox River Watershed, with subwatersheds including the Eagle Creek, Honey Creek, Middle Fox River and the Wind Lake Drainage Canal. Surface water resources include a few smaller lakes and ponds, and perennial streams. Eagle Creek traverses the southeaster portion of the Town in a generally east-west direction, and the Fox River traverses the eastern portion of the Town in a generally north-south direction. There is an unnamed stream in the central part of the Town, which is a tributary to Long Lake, near the south central Town border, and the Wind Lake Drainage Canal, a tributary to the Fox River.⁵

Floodlands in the Rochester area encompass about 1.1 square miles, or about 6% of the Town and Village. They are located along Eagle Creek, the Fox River, the unnamed tributary associated with Long Lake, the Wind Lake Drainage Canal and Honey Creek in the Town of Burlington, to the south. Wetlands occupy approximately 2.3 square miles, or about 13% of the area. Wetland areas are mainly concentrated within and adjacent to the Honey Creek Wildlife areas and adjacent to Long Lake. These areas are depicted on Petitioners Map 11 in the Consolidation Report.

Soils

An examination of the soil characteristics of an area is important for a number of reasons. Soils influence the location and potential quantities of vegetation and wildlife present in an area. They determine how much rainfall or snow melt will flow into rivers, lakes and wetlands and how much will infiltrate into the ground. They also determine the feasible location of residential and commercial development. Map 5 in the Petitioners' Consolidation Report outlines the soil types present within the Village and Town.

The majority of the soils in the Rochester vicinity are from the Moreley-Beecher-Askum, Hebron-Montgomery-Aztalan, Fox-Casco, Houghton-Palms, Miami, and Casco-Rodman associations. Petitioners Land Use Plan provides characteristics of these soils.⁶

As seen in Map 3, POWTS⁷ Suitability, in Appendix B, many of the soils found throughout the area proposed for consolidation are suitable for mound sewage disposal systems under Chapter Comm 83 of the Wisconsin Administrative Code. Because these areas can develop without sewer, they are susceptible to sprawl as defined by the Southeastern Wisconsin Regional Planning Commission (SEWRPC).⁸ There are also pockets of soils with low Private Onsite Wastewater Treatment Systems (POWTS) suitability. These are concentrated primarily in the areas adjacent to the Honey Creek Wildlife area. Petitioners identify that 36.81 ¼ sections (52% of the territory) are unsuitable for development.⁹ As most remaining undeveloped land deemed suitable for development by Petitioners is agricultural, development pressure would likely lead to housing or other development into these prime agricultural soil areas.

⁵ A Land Use Plan for the Town and Village of Rochester: 2020, Racine County Division of Planning and Development, and SEWRPC, 1999, page 27.

⁶ Ibid. p. 22

⁷ Private On-site Waste Water Treatment Systems

⁸ Ibid. p. 29. SEWRPC defines sprawl as development without sewer. Normative urban planning theory would likely say that sprawl also includes absence of association between residential development and schools, retail establishments, and employment centers.

⁹ Town and Village of Rochester Consolidation Report, p. 59.

Critical Species

While not expressly part of the standard under review (the federal and state adoption of the relevant endangered species acts post-dates the advent of Wisconsin's incorporation/consolidation statute under which this petition was filed), the following information presented here may be useful to the Town and Village of Rochester as they develop plans, policy measures, and ordinances that prospectively recognize and protect the many endangered and threatened species and unique natural communities present in the proposed consolidated village.

Under the provisions of s. 29.608, Wis. Stats., Wisconsin assumes responsibility for conserving native wild animals and plants, and for taking steps to enhance their continued survival and propagation for the aesthetic, recreational and scientific benefits for future generations. The Wisconsin Legislature has found that the activities of both individual persons and governmental agencies are tending to destroy the few remaining plant-animal communities in the state. Therefore, the legislature has urged "all persons and agencies to fully consider all decisions in this light."¹⁰

The Wisconsin Department of Natural Resources (WDNR) has established by administrative rule an endangered species and threatened species list. "Endangered species" means any species whose continued existence as a viable component of this state's wild animals or wild plants as determined by the WDNR to be in jeopardy on the basis of scientific evidence. "Threatened species" means any species of wild animals or wild plants which appears likely, within the foreseeable future, on the basis of scientific evidence to become endangered. "Special Concern species" means species with suspected problems of either abundance or distribution, and about which more information will be gathered.¹¹

WDNR classified one site near Case Eagle Park, having approximately 60-acres, as a Critical Species Habitat Site. It supports a rare prairie plant species, the kittentail, and one threatened bird species, the Acadian Flycatcher¹².

Because a comprehensive endangered resource survey has not been completed for this area, there may be other endangered species present in addition to those listed above.

Environmental Corridors, Wetlands and Natural Areas

Primary environmental corridors are located throughout the Town of Rochester that include woodlands, wetlands, significant natural areas, wildlife habitats and undeveloped natural shoreland areas as seen in Map 17 of the *Land Use Plan for the Town and Village of Rochester*. These corridors comprise about 4.8 square miles, or 27% of the consolidation area. The more easterly corridor essentially engulfs the Village Of Rochester. Two secondary environmental corridors are located at the eastern and western town boundaries having about .5 square miles or 3% of the territory. Woodlands are in scattered areas covering about 2.4 square miles, or around 14% of the Town and Village. The area includes two known prairies with a combined area of about two acres. Wildlife habitat areas generally occur near the surface water, wetland and woodland resources.¹³

The *Land Use Plan for the Town and Village of Rochester* calls for primary environmental corridors to be preserved for essentially natural, open uses, and for development with these

¹⁰ Bohners Lake Determination (1999).

¹¹ Section 29.604, Wis.Stats.

¹² Land Use Plan for the Town and Village of Rochester, SEWRPC, Page 33.

¹³ Ibid. Page 28-33

corridors to be limited to compatible outdoor recreational facilities, and limited rural-density residential use (5 to 30 acres per dwelling unit). Secondary environmental corridors are recommended for preservation, well-planned rural residential development, or sites for drainageways, storage detention basins, or open space in developing urban areas.¹⁴

Ambient Air Quality

Racine County is in nonattainment of the 8-hour ozone standard of U.S. Environmental Protection Agency (EPA) air quality standards, and because of this, the County, the Town and Village of East Troy are subject to specific control measures. Therefore, both the Village and Town of Rochester should encourage compact development, along with related commercial and retail facilities, that shorten trip distances for working, shopping, going to school, etc. The Village and Town should also facilitate transportation alternatives to driving such as transit, walking, and bicycling. This is described further in this section under transportation and land use.

Historical, Archaeological or Architecturally significant resources

Resources situated within an area proposed for incorporation can have statewide or even national importance. The Department considers the existence of such resources as well as actions taken to preserve them. A search of the Wisconsin State Historical Society (WSHS) databases revealed no historic places in either the Village or Town of Rochester on the state or national register of historic places. The types of properties that are eligible for listing on these registers include historic districts, individual buildings, parks, bridges, locomotives, and archaeological sites.

The WSHS also collects information on Wisconsin structures and archeological sites which, although not listed on the historic register, may potentially have historic value and warrant further examination. There are 92 such historic structures, identified by the State Historical Society of Wisconsin's Wisconsin Architecture and History Inventory, in the proposed area for consolidation. The Village has 45 and the Town, 47. These areas vary in structure and include approximately 57 houses, eight retail buildings, four churches, three schools, ten barns, an opera house/concert hall, a railroad marker, two outbuildings, a hotel/motel, a meeting hall, and other miscellaneous structures.¹⁵

The WSHS records do not include all of the archaeological sites, mounds, unmarked cemeteries, marked cemeteries, and cultural sites that are present in the state, only those sites that have been reported. Undoubtedly other sites are also present but have not been investigated or have not been reported.

Transportation

The Department reviews modes of transportation within an area proposed for consolidation to determine if the area streets, highways, roads, bikepaths, sidewalks, and other modes of transportation contribute to a finding of compactness and homogeneity under s. 66.0207(1)(a), Wis.Stats. The following review details the state of transportation systems in both the Village and Town of Rochester, as seen on Map 1 Rochester Consolidation Area, Appendix B.

Highways and Roads

Approximately 37 miles of streets and highways serve the Town and Village, which include only two major transportation facilities, specifically, STH 36 and STH 20. STH 36 bisects the territory from north to the south in the far eastern area of the Town. STH 20 intersects at an interchange

¹⁴ Ibid. Pages 70-74.

¹⁵ Wisconsin Architecture & History Inventory, <http://www.wisconsinhistory.org/ahi/search.asp?cnty=RA>.

SECTION 1(A) HOMOGENEITY AND COMPACTNESS

with STH 36 in the northeast corner of the Town, and joins STH 83 north of the Town without entering any of the developed areas of the Town or Village of Rochester. County roads include County Trunk D (Washington Avenue), which traverses the northern third of the Town east to west and passes through the center of the Village of Rochester. County Trunk FF (Academy Road) connects the residential development in the southwest corner of the Town, with the Village. County Trunk J (New English Settlement Avenue) provides access between the Village and the southeast corner of the Town. County Road W (Front Street) passes through the Village and provides access to the southern boundary to the newly developing retail trade area in the Town of Burlington. Twenty-two miles (59 percent) of streets and highways are under the jurisdiction of the County and State governments and the Town and Village manage approximately 17 miles.¹⁶

A special purpose taxing district was formed in 1982 in the Honey Lake neighborhood area for properties surrounding Tahoe and Delmonte Lakes to provide maintenance improvements to the lake and private roads. The district straddles the Racine County/Walworth County line and includes territory in the Town of Spring Prairie¹⁷.

While these roads do provide a degree of internal connectivity, relatively few route options enable residents to move throughout all areas of the town. This could, with existing farming and new subdivision development, produce dangerous conditions such as slow moving farm equipment sharing the road with increasing numbers of cars. Such conditions often increase discord between farming and non-farming land uses in an area.

During a site visit to the proposed territory, the Department noticed instances where streets and roads vary considerably in pavement condition, do not appear to have the same right-of-way easement, and some roads lack shoulders. While this is typical of other areas in southern Wisconsin that were platted decades ago, it may create safety concerns. Additionally, instances were noted of lack of development control and planning resulting in mismatched streets (example, dead end at Westwood Avenue North of County Trunk A). According to the petitioners, an intergovernmental committee with Racine County, the Village and Town of Waterford, Village and Town of Rochester is working on a design plan for the corridor, with the intention of adopting standards that encourage uniform development and street layout patterns.

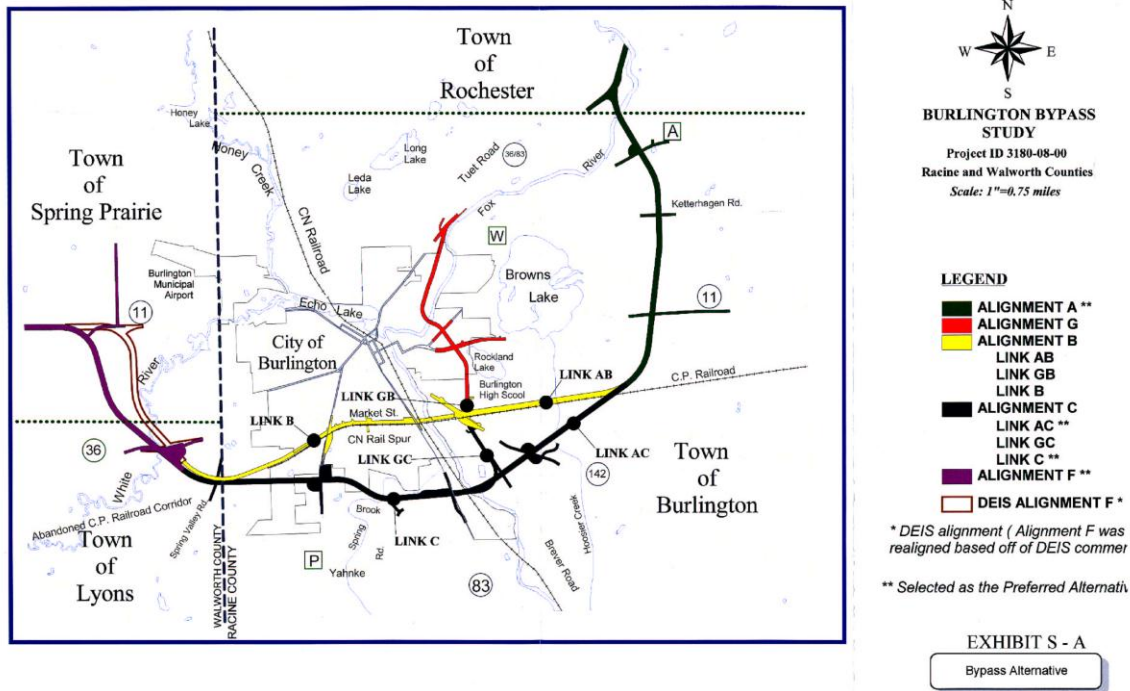
The Village and Town Land Use Plan does not propose any changes to the existing pattern of roadways, however, a STH 36 Burlington bypass has been proposed, which is expected to be located in the southwest corner of Section 14, in the Town of Rochester. This 11-mile bypass would reroute traffic on STH 36 to a new loop that would accommodate existing and forecasted traffic volumes. The new route would more efficiently and safely provide a new travel pattern into and out of the city of Burlington by helping to reduce truck traffic in the downtown area, and relieving delays at at-grade intersections resulting from increasing train traffic. The existing STH 36 would be renamed Business 36, and would see lower traffic volumes after the bypass is completed. A Record of Decision is expected to be signed in Spring 2004, with Real Estate activities occurring during late 2003 to 2007. Actual construction is expected to begin in 2006.¹⁸ The proposed bypass is shown on the following WISDOT Map.

¹⁶ A Land Use Plan for the Town and Village of Rochester: 2000. SEWRPC, page 42.

¹⁷ Town and Village of Rochester Consolidation Report, page 33.

¹⁸ Wisconsin Department of Transportation, Burlington bypass project Internet posting at <http://www.dot.state.wi.us/projects/d2/burl/index.htm>.

SECTION 1(A) HOMOGENEITY AND COMPACTNESS



Rail

A mainline freight railway owned by Wisconsin Central, Ltd. passes along a north-south route near the far western Town boundary, crossing three Town roads.

Air

Fox River Airport, a small public airport is located in the Town of Rochester, approximately 1.5 miles west of the Village. The airport has two runways in poor condition and averages about 96 aircraft weekly.¹⁹ Rochester residents can also take advantage of Burlington Municipal Airport, five miles to the southwest, and Milwaukee’s General Mitchell International Airport, 29 miles to the northeast.²⁰

Transit

Public transit for Town and Village of Rochester residents is severely limited. Transit service for the elderly and persons with disabilities is provided through a program administered by the Racine County Human Services Department.²¹

Pedestrian and Bicycle

Pedestrian and bicycle options for area residents are also severely limited. Regarding pedestrian opportunities, sidewalks are located primarily within the older neighborhoods of the Village of Rochester. Recent Village subdivisions and residential areas in the Town have been developed without sidewalks, limiting safe pedestrian opportunities.²² A Departmental site visit found limited

¹⁹ As reported on the Internet on January 21, 2004 at <http://www.airnav.com/airport/96C>.

²⁰ Economic Profile, Village of Rochester, WI, SEWRPC.

²¹ Ibid.

²² Re: Assessment of Information, East Troy Consolidation from Russell Knetzger to George Hall (10/6/02) p. 2.

or nonexistent shoulders along roadways that could potentially provide pedestrian or bicycle access. Racine County has developed bicycle paths throughout the County, which includes one four-mile segment of the 100-mile “on the road” Racine County bicycle route, which is located in the southeastern portion of the Town.²³

Political Boundaries

As seen in Map 1 of the Consolidation Report, the political boundaries of the proposed consolidation territory follow the Walworth County and Town of Spring Prairie line on the west and the Town of Waterford Boundary to the north, except where the Village of Waterford annexed territory from the Town of Rochester. The boundary to the east follows the Town line with the Town of Dover and the southern boundary is a straight line with the Town of Burlington.

As protection from annexation is often an incentive for incorporation or consolidation, this section discusses land annexations from the Town of Rochester. The following paragraphs also describe the boundaries of the school districts and sanitary district that serve Rochester residents.

Annexation

The exterior boundary or perimeter of the Town of Rochester has remained relatively stable over the course of its history, given that other towns similarly lacking annexation power bound it almost entirely. The only annexation to a municipality other than the Village of Rochester was to the Village of Waterford, occurring in 1969, resulting in an irregular northern border.²⁴

School District Boundaries

The area proposed for consolidation is served by the Waterford Graded School District, Waterford Union High School District and the Burlington School District as shown on Department Map 4, Appendix B. Waterford schools are all located in the Village of Waterford, and Burlington schools are all located in the City of Burlington. Approximately 489 students from the Town and Village of Rochester attend the Waterford area schools, and 139 attend the Burlington School District.²⁵ School district boundaries result in all of the students living in the old settlements of Honey Creek and Honey Lake, plus the majority of those living in the southeast corner of the Town to attend school in the Burlington School District. These areas comprise the most densely populated areas in the Town. All of the students residing in the Village of Rochester attending public school, attend school in Waterford.

Determination of school district boundaries is an entirely separate process from municipal governance, and the proposed consolidation of the Town and Village of Rochester will have no effect on school district boundaries. However, as the Department noted in its determination in *Pewaukee* (1998), schools nonetheless influence molding community allegiance through scholastic, social, and recreational activities.

The following table lists the schools serving the area proposed for consolidation.

²³ Land Use Plan for the Town and Village of Rochester: 2020. SWRPC.

²⁴ Submittal in Support of the Consolidation of the Village and Town of East Troy (2002), Appendix, Tab 1.

²⁵ Town and Village of Rochester Consolidation Report, Section 4, page 38.

Table 1: Public Schools Serving the Village and Town of Rochester²⁶

School Name	Town & Village Students	Grades	Location
Waterford Graded School	285	1-8	Village of Waterford
Waterford Union High School	204	9-12	Village of Waterford
Burlington Elementary	43	K-6	City of Burlington
Burlington Middle School	56	7-8	City of Burlington
Burlington High School	40	9-12	City of Burlington

Information in this table is listed in the Town and Village of Rochester Consolidation Report, Section 4, page 38. Year of data was not given and presumed by the Department to be 2003. Petitioners indicate information was developed from bus route schedules and student addresses for students registered in each district.

Sewer Service

Sanitary sewer service has been available in the Rochester area since 1968, and a sewer service area plan for the Town and Village of Rochester was completed in 1996. The service area, as shown in the *Land Use Plan for the Town and Village of Rochester* (page 48) covers about 1,550 acres or about 31% of the Town and Village territory. Of this area, in 1995, the Western Racine County Sewerage District provided about 350 acres with sanitary sewage treatment. About 500 acres of the service areas are designated as environmentally sensitive, leaving about 700 acres available for new urban development. Treatment capacity of the district treatment plant is expected to be exceeded prior to 2010.²⁷ The remainder of development in the Town is served by on-site septic systems.

Water supply

Neither the Town nor Village of Rochester is served by a public water supply system, and instead relying on groundwater through the use of private on-site wells.

Shopping and Social Customs

The area proposed for consolidation provides a number of shopping, employment, social and recreational opportunities for area residents. The Town and Village of Rochester Consolidation report lists Town and Village social/civic opportunities, including a Rochester Memorial Day Committee, an historical society, a Village of Rochester Historical Preservation Committee, an environmental preservation group, and a non-profit wildlife Society.

Shopping and employment

Map 5 Rochester Area Businesses, Appendix B, shows the locations and types of businesses located in the Town and Village of Rochester. According to Petitioners' submittal, there are 70 businesses in the area, with 20 (29%) located in the Village and 50 (71%) scattered throughout the territory, primarily located along county and state highways. These businesses provide 304 full-time and 183 part-time positions, of which 27 are seasonal. Neither the Town nor Village has a grocery store, and other daily shopping opportunities are limited to a few specialty item type retail outlets. Town and Village residents must therefore rely heavily on neighboring jurisdictions

²⁶ Town and Village of Rochester Consolidation Report, Section 4, page 38.

²⁷ Land Use Plan for the town and Village of Rochester, pages 44-45.

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to meet many of their shopping and employment needs. During a Departmental site visit, residential development in Town of Rochester’s south eastern quadrant was found to be more associated with the City and Town of Burlington which is quite near a new Wal-Mart Store, and other emerging development in the Town and City of Burlington’s north-east side. Residents in the southeast portion of the town would find working or shopping opportunities in the Burlington area more numerous and convenient due to STH 36 access to Burlington area businesses.

Businesses located in the proposed territory include the following, as listed in the Consolidation Report.²⁸

Table 2: Major Employers in the Town and Village of Rochester

Name	Business Type	Location
Able Dave's Chimney Specialists	Construction	Town
Aircraft Corporation American Champion	Manufacturer	Town
American Monarch Machines	Equipment Sales	Town
American Power Equipment	Equipment Sales	Town
Artful Shingler	Construction	Town
Artistic Cleaners	Service, Carpet Cleaning	Town
Boulden Welding & Fabricating	Construction	Town
Burger King	Restaurant	Town
Chart Concrete & Masonry	Construction	Town
Chuck's Tree Moving	Landscape Service	Town
CJ's Test & Septic	Service, Septic Systems	Town
Cornerstone Communications	Service, Business	Town
Custom Grading & Installation	Septic Tank Installation	Town
Dale's Bar	Bar	Town
Deharts Pool & Spa Service	Retail Sales	Town
Delta Specialists	Construction	Town
Dick Kempken & Sons	Construction	Town
Dover Pond antiques	Retail Sales	Town
Earth Exchange	Landscape Service	Town
Ela Aple Orchard	Fruit Growers	Town
Ellefson Business Consulting	Service, Business	Town
Fox River Golf	Golf Range	Town
Franciscan Missions	Religious	Town
Freddy Bears	Retail Sales	Town
Hitch'n Post	Bar	Town
IPS Inc.	Manufacturer	Town
Item Zone	Service, Business	Town
Iverson Computer Service	Service, Business	Town
James Construction	Construction	Town
JP Construction	Construction	Town
Ken's Lawn Finishing	Landscape Service	Town
Larry Kempken & Sons Builders	Construction	Town
Lynch Truck Center	Retail Sales	Town
Maas & Sons	Service, Water System	Town
Pampered Pooch	Service, Dog Grooming	Town

²⁸ Town and Village of Rochester Consolidation Report, pp. 36-37.

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Name	Business Type	Location
Parkview Sand & Gravel	Manufacturer	Town
Payne & Dolan Inc.	Manufacturer	Town
Pro-pellers Dah	Service, Propeller Customizing	Town
Rev's Service	Service, Skid Loader	Town
Rochester Sign Shop	Service, Business	Town
Roesing Furniture	Retail Sales	Town
Rustic Road Landscaping	Landscape Service	Town
Savaglia Painting	Construction	Town
Spyder Designs	Service, Business	Town
Stich's Greenhouse	Landscape Nursery	Town
The Bunker	Bar/Restaurant	Town
Thomas Buse	Auto Repair	Town
Tom Lynch Masonry	Construction	Town
Triway Excavators	Construction	Town
Windblown Tree Plantation	Landscape Nursery	Town
Act II Hair Design	Service, Beauty Shop	Village
Angel Acres	Retail Sales	Village
Beck Construction	Construction	Village
Bosman Monuments	Retail Sales	Village
Chances	Bar/Restaurant	Village
Clark's Cabinets	Construction	Village
Community State Bank	Bank	Village
Coral Reef	Bar/Restaurant	Village
Finders Keepers	Coffee Shop/Crafts	Village
Fox River Flooring	Retail Sales	Village
Front Street Bar & Grill	Bar/Restaurant	Village
Hankel & Associates	Service, Ind. Water Treatment	Village
Kinder Kloset	Retail Sales	Village
New To You	Retail Sales	Village
Peaceful Inspirations	Retail Sales	Village
Pooch Place	Retail Sales	Village
Richard Hall CPA	Service, Business	Village
Rochester Mini-Mart	Convenience Store	Village
Stamp Fanatics	Retail Sales	Village
Wilma's Beauty Shop	Service, Beauty Shop	Village

The *Land Use Plan for the Town and Village of Rochester* recommends that a neighborhood shopping center with grocery store be located at the intersection of STH 36 and County D, an area in the northwest quadrant of the Town.²⁹ This location would be convenient for residents of the Village, but less so for many, and impractical for much of the existing and proposed residential development. It would, however, provide convenient shopping for residents of the adjacent Village of Waterford. Residents in the Honey Lake area, and those living in the southeast quadrant of the Town would be more likely to shop in the Town or City of Burlington. No plans were submitted to the Department for any new industrial development, only the continuation or

²⁹ A Land Use Plan for the Town and Village of Rochester: 2020, pp. 70-71.

expansion of current locations. A Rochester Business Owners Association meets once monthly, however its membership and supporters include only Village of Rochester businesses.³⁰

Recreation

Town & Village residents have several recreational opportunities. There are two parks, one nature camp, and 7 open space areas, comprising approximately 1,524 acres, or about 13 percent of the planning area.³¹ The Town and Village host a “Day in the Country Event” once annually that is attended by approximately two thousand people, and also a Memorial Day Parade that has taken place annually since 1867.³²

Churches

There are 3 churches in the area proposed for consolidation, as shown in the table below. While the First Congregational Church in the Village draws considerable membership from the Village, the two churches in the Town have the majority of their members living outside the territory proposed for consolidation.

Table 3: Village and Town of Rochester Churches

Name	Approximate No. of Village or Town Members	Approximate No. of Other Members	Location
First Congregational Church of Rochester	50-60	60-70	Village
English Settlement United Methodist Church	3 families	100	Town
Honey Creek Community Baptist Church	14	60	Town

Source: Derived from information in the Town and Village of Rochester Consolidation Report. Page 31

Summary of Current Land Uses

The Village of Rochester has developed in a compact fashion, having low, and medium-density residential, commercial, industrial, park, and open space uses. Potential growth areas are limited by the presence of Primary Environmental Corridors nearly surrounding the Village, and the presence of land identified as “difficult to develop” in the southeast corner of the Village³³.

Land uses in the Town of Rochester vary greatly from those in the village. The Town remains dominated by non-urban land uses with nearly 55% of land in agriculture (or lying fallow), and about 28% of land in natural areas. There are several pockets of concentrated residential development, as well as homesites scattered throughout the town, especially along major roads. Two of the more densely developed areas include the old settlements of Honey Creek, in the Northwest corner of the Town, and Honey Lake, in the Southwest corner, which extends into the adjacent Town of Spring Prairie. Another pocket of development is located near the south central Town boundary, adjacent to a Wal-Mart store that was recently constructed in the Town of

³⁰ Town and Village of Rochester Consolidation Report, p. 28.

³¹ A Land Use Plan for the Town and Village of Rochester: 2020, pp. 34, 36.

³² Town and Village of Rochester Consolidation Report, pp. 27-28.

³³ Ibid. Page 72

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Burlington. A large area of residential development lies within the Town immediately north of the Village’s northeast quadrant, and the style and density of development is similar to that of the Village.

Primary environmental corridors nearly surrounding the Village on three sides have discouraged development in the past, with much of the land being either generally unsuitable for development or restricted by statutory and administrative regulations. The land use plan for the future indicates that preservation of these corridors in essentially natural, open uses is critical to the maintenance of the overall quality of environment of the planning area, and urges limiting primary corridor development³⁴. This essentially creates an understandable, yet physical barrier between existing or potential residential development areas in the Town and Village.

As identified on Map 6 on page 23 of the Town and Village Land Use Plan, the urban service area is located in the northern two thirds of the easterly one-third portion of the Town. It takes in the entire Village, the developed area north of the Village, and additional territory to the east and south. All other developed areas in the territory, due to low densities, are intended to have only on-site sewage treatment facilities.

The following table, shows that most recent residential development is occurring in the Town at the rate of about 20 permits per year.

Table 4: Building Permit Data

Year	Village of Rochester Residential Building Permits	Town of Rochester Residential Building Permits
1998	1	21
1999	8	7
2000	1	18
2001	3	20
2002	0	18
Total	13 (13.4%)	84 (86.5%)

Source: Developed from data provided in the Town and Village of Rochester Consolidation Report, Appendix 9.

The following table provides the existing and proposed land uses for the village and town, taken from the *Land Use Plan for the Town and Village of Rochester: 2020*.

Table 5: Town and Village of Rochester Existing and Proposed Acreage

Land Use Category	1995 Acres	Percentage of Total 1995 Acres	Planned Change: 1995-2020 Acres	Percentage Changed	2020 Change of Acreage	2020 Percent Change of Acres
Urban Residential & Other Uses						
Suburban density (1.5 to 4.909 acres per dwelling)	154	1.4	77	50.0	231	2.0
Low-density (19,000 sq. ft. to 1.49 acres per dwelling)	390	3.4	354	90.8	744	6.6
Medium-density (6,200 to 18,999 sq. ft. per dwelling)	163	1.4	59	36.2	222	1.9

³⁴ A Land Use Plan for the Town and Village of Rochester: 2020, p. 73

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Land Use Category	1995 Acres	Percentage of Total 1995 Acres	Planned Change: 1995-2020 Acres	Percentage Changed	2020 Change of Acreage	2020 Percent Change of Acres
Urban Residential Subtotal	707	6.2	490	69.3	1,197	10.5
Commercial	23	0.2	33	143.5	56	.5
Industrial	43	0.4	28	65.1	71	.6
Government & Institutional	41	0.4	--	--	41	.4
Recreational	5	-- ^a	128	2,560.0	133	1.2
Other Urban	65	0.6	--	--	65	.6
Urban Reserve	--	--	264	--	264	2.3
URBAN SUBTOTAL	884	7.8	943	106.7	1,827	16.1
Non Urban						
Agricultural lands	5,060	44.6	-944	-18.7	4,116	36.3
Rural Residential and agricultural lands (5 to 30 acres per dwelling)	989	8.7	-208	-21.0	781	6.9
Primary Environmental Corridor	3,084	27.2	35	1.1	3,119	27.5
Secondary Environmental Corridor	292	2.6	--	--	292	2.6
Isolated Natural Resource Area	269	2.4	--	--	269	2.4
Other Public Open Space	479	4.2	-30	-6.3	449	3.9
Extractive Uses	286	2.5	204	71.3	490	4.3
Nonurban Subtotal	10,459	92.2	-943	-9.0	9,516	83.9
Total Land Uses	11,343	100.0	--	--	11,343	100.0

^a Less than .5 percent

Section 1(a) Determination of Homogeneity and Compactness

Petitioners are seeking to consolidate an entire semi-rural township with a developed village. Although this is a proposed consolidation, the statutory directive for municipal consolidation refers to the standards that are applied to proposed incorporations. Therefore, the extensive case law, past Department precedent, and legislative study committee reports regarding the application of s. 66.0207, Wis. Stats., to incorporations are also relevant to this proposed consolidation of the Town and Village of Rochester.

The homogeneity and compactness standard presents a dilemma for the Department when considering the consolidation of a rural entity with an urban one. Wisconsin Legislative Council records suggest that the several variations (town with town, cities/villages with cities/villages, and towns with either a city or village) for municipal consolidation received scant attention during the 1959 Urban Problems Committee deliberations. The only practical inference that can be drawn is that towns, cities and villages were intended to consolidate with other similar units of government, including towns, cities and villages; with the two consolidating units possessing either “urban” or “rural” characteristics – otherwise the “homogeneity and compactness requirement” in s. 66.0207 (1) (a) would be rendered meaningless.³⁵ An obvious conceptual difficulty presented by the statutory

³⁵ With the exception of town-town consolidations, which does not confer home-rule “police power” authority.

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wording is the interpretative challenge resulting from combining a rural or semi-rural town (with boundaries in part derived from the Northwest Ordinance, and bearing little direct relationship to any socio-economic or physiographic attributes), with a city or village whose boundaries and suite of municipal activities typically reflect the very statutory attributes desired, but now obscured because of the combination with the town.

The Department has concluded that the only practical interpretation of s. 66.0229, Wis. Stats., is that an urban city or village consolidating with a rural town must be compact and homogenous in its entirety, consistent with the statutory language relating to the standards found in s. 66.0207, Wis. Stats. Section 66.0207(1)(a), Wis. Stats. commences with: “The *entire* territory of the proposed city or *village shall be reasonably homogenous and compact*, taking into consideration...” (emphasis added). This is not to say that whole town incorporations or consolidations are not possible. For example, the whole town incorporations of *Pewaukee* (1998), *Bellevue* (2002), and *Mount Pleasant* (2003) are examples where the territory was found to be homogenous and compact. Petitioners in all three of these examples were able to show that the lands within the territory proposed for incorporation had some internal connection and was logical from natural resources, transportation, social, political, and economic perspectives.

Petitioners argue that Wisconsin case law requiring that territory petitioned for incorporation be urban in nature rather than rural³⁶ does not apply since the area proposed for consolidation is an “Isolated Village” rather than a “Metropolitan Community”.³⁷ However analysis by the Department indicates that Petitioners are incorrect. The territory actually meets the population threshold for a metropolitan community.

Wis. Stats. 66.0201 (2) (bm) defines an *Isolated Municipality* as

any existing or proposed village or city entirely outside any metropolitan community at the time of its incorporation.

Wis. Stats. 66.0201 (2)(c) defines a Metropolitan Community as

the territory of any City having a population of 25,000 or more, or

any 2 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 persons per square mile, or

which the department has determined on the basis of population trends and other pertinent facts will have a minimum density of 100 persons per square mile within 3 years.

Wis. Stats. 66.0201 (2)(d) defines a *Metropolitan Municipality* as

any existing or proposed village or city entirely or partly within a metropolitan community.

³⁶ See *Town of Pleasant Prairie v. Dept. Of Local Affairs and Development*, 108 Wis.2d 465 (Ct. App. 1982), *Village of Elmwood Park v. City of Racine*, 29 Wis.2d 400 (1966), *In re the Incorporation of the Town of Pewaukee v. Wis. Dept. Of Development*, 186 Wis.2d 515 (Ct. App. 1994), *Town of Pleasant Prairie v. Local Affairs and Development*, 113 Wis.2d 327 (1983).

³⁷ See *Memorandum in Support of a Finding of “Homogeneity and Compactness”* by John Hotvedt, attorney for Petitioners, received by the Department on February 13, 2004.

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Based upon population density data in the Racine County area³⁸, the Department has determined that the territory meets the definition of a *Metropolitan Municipality* and is not an *Isolated Municipality* for the following reasons:

1. Map 7 Rochester Area Population Density in Appendix B shows that contiguous U.S. Public Land Survey Sections containing at least 100 persons per square mile extend from the cities of Franklin, Muskego, and Oak Creek. Population density for two miles along the northern proposed territory boundary is well above 100 people per square mile, and this density pattern continues without interruption to the north and intersects with the City of Muskego, which is contiguous with the cities of Muskego, Franklin, and Oak Creek.
2. The City of Muskego had an estimated population of 22,054, Franklin a population of 31,467 and Oak Creek a population of 30,856 in 2003.³⁹

Since the proposed village does not fit the definition of an *isolated municipality*, and is part of a *metropolitan community*, the Department is obliged to apply all of the caselaw and past precedents for metropolitan communities, including the holding that the entire territory proposed for incorporation must meet all of the criteria for homogeneity and compactness.

The Department would also point out that Petitioners are incorrect in claiming that a finding of homogeneity and compactness does not apply to *isolated municipalities*; section 66.0207(1)(a) Wis.Stats., expressly requires a finding of homogeneity and compactness for *both* isolated and metropolitan communities. Even if the Town and Village of Rochester were to be construed as an *isolated municipality*, the combination of the two would still need to meet this standard. The review of *isolated municipalities* also includes the additional requirement of having a reasonably developed community center.

Petitioners also argue that the Department's determination in *Mount Pleasant* (2003) allows territory proposed for incorporation to be predominantly rural in character rather than urban. Petitioners misread this determination. Although a great deal of the territory in Mount Pleasant was in agricultural use, the development market and service potential for that territory was significant. Factors the Department considered were that the agricultural lands in that case were within a recently expanded sewer service area, an intergovernmental agreement with the City of Racine and other area jurisdictions had recently been achieved to provide sewer service in return for revenue sharing, analysis of building permit records, ownership patterns, market demand, and proximity to major transportation corridors showed that potential for development of the agricultural land was substantial. Petitioners point to the Department's language in *Mount Pleasant* regarding Mount Pleasant's strong agricultural preservation efforts as reflected in local plans and ordinances and its success on the ground (loss of only 200 farm acres in 31 years, and how Rochester similarly has a good preservation record. However, the significance of the strong agricultural efforts in *Mount Pleasant* is not in that it opens up the possibility of incorporation of agricultural lands, but in the fact that it provides the opportunity for orderly and cost-effective development when the time comes for development. By preserving its agricultural lands in a block, rather than allowing scattered and unplanned development, Mount Pleasant has the opportunity for orderly and cost-effective growth when the market for development is ripe. The Department approved *Mount Pleasant* because its analysis showed that the time for development of the agricultural lands was very near, a fact relevant for both the homogeneity and compactness standard in (1)(a) and the territory beyond the core standard in (2)(b)). The Department

³⁸ Total population by section in Racine County and the cities of Franklin and Oak Creek, 2000. Southeastern Wisconsin Regional Planning Commission.

³⁹ January 1, 2003 Final Population Estimates for Wisconsin Municipalities, Wisconsin Department of Administration.

appreciates the agricultural preservation efforts of the Town and Village of Rochester and does not in any way wish to minimize these efforts or discourage their continued practice. However, Petitioners' claim that territory proposed for incorporation may now be predominantly agricultural in nature is mistaken.

The following paragraphs provide the finding with regard to each aspect of the homogeneity and compactness standard.

Natural boundaries

Natural characteristics that would define any of the proposed territory's boundary are nearly absent and do not support the proposed municipal boundary, which is based nearly entirely on township jurisdictional boundaries. Natural areas, as mentioned earlier in this determination, provide a development barrier between the Village and Town areas within the proposed consolidated territory. The Honey Lake development, in the southwest corner of the Town is isolated from the remainder of the Town by wetlands, a Primary Environmental Corridor, the Honey Creek Wildlife area to the east, and large areas of agricultural land and a Secondary Environmental Corridor to the North. The Fox River splits the territory on a north-south axis in the eastern third of the territory. These natural development barriers are visually apparent on Petitioner's Map 17 in the Consolidation Report. From 1982 records⁴⁰, Honey Creek Wildlife area included three parcels part of which are within the Town and parts in the Towns of Burlington to the south in Racine County, and in the Town of Spring Prairie to the south and west in Walworth County. Portions of the wildlife area are owned and managed by the Wisconsin DNR. The Honey Creek Wildlife Area generally corresponds to the boundaries of Primary Environmental Corridors that pass through the Towns of Rochester, Spring Prairie, and Burlington. A special purpose district, the Honey Lake Protection and Rehabilitation District, was formed in 1982 in response to a need to perform maintenance improvements to the lake and private roads. Honey Lake, the major water body associated with the Honey Lake residential area, lies entirely in Walworth County within the Town of Spring Prairie. Long Lake is part of a primary environmental corridor that extends into the Town of Burlington. More than two thirds of Long Lake lies in the Town of Burlington. .

Natural drainage basin

As identified earlier in this determination, Petitioners Map 11 in the Consolidation Report and Department Map 6 Watersheds in Appendix B illustrates that even though the Town and Village lie entirely in the Fox River Watershed, there are subwatersheds of Eagle Creek, Honey Creek, Middle Fox River and the Wind Lake Drainage Canal. This situation means that residents in the Honey Lake area, Wind Lake, and Eagle Creek sub-watersheds may have issues and concerns that differ from the residents of the proposed Village. Since the entire territory is not served by a public water supply system, planning decisions concerning water resources will need to be carefully coordinated.

The statutory purpose of s. 66.0207(1)(a), as it applies to drainage basins is presumably to ensure common and coordinated water resource management. The Department concludes that water resources planning between the Town and Village could be better served if the consolidation were approved. However, the Department finds that certain territory, for example, water resource planning decisions made for the Honey Lake residential area may more greatly impact areas to the east in the Town of Spring Prairie, and south in the Town of Burlington, both areas lying within the extraterritorial zoning boundary of the City of Burlington.

⁴⁰ Wisconsin Department of Natural Resources Project Boundary data layer PNDPW924.

Soils

Soil associations portrayed on Map 5 of the Consolidation Report, show six major soil associations in the Town of Rochester. Morley-Beecher-Askum soils comprise most of the territory east of the Fox River. The only exception is a narrow band of Hegron-Montgomery-Aztalan soils occurring in the northeast corner of the territory. Casco-Rodman soils are primarily located in the developed portions of the Village of Rochester west of the Fox River in a roughly one mile band running from north to south across the entire Town. A band of Miami Association soils is located in the north west part of the territory, a soil pattern that continues into the town of Waterford territory to the north and east into the Town of Dover. Three pockets of Houghton-Palms Association soils, which is a classification for very poorly drained soils, are located in the Honey Creek Wildlife Area, the Honey Lake area, and the area north of Long Lake. The Honey Lake area soils extend south into the Town of Burlington and west into the Town of Spring Prairie suggesting greater homogeneity with territory in these Towns and their associated lakes and drainage areas. The Houghton Palm soils north of Long Lake are more associated with the territory to the South in the Town of Burlington, where most of Long Lake is located. These soil patterns and their relationships with adjacent municipalities and water features are apparent by viewing Map 5-General Soil Associations of Racine County.⁴¹

Present and potential transportation facilities

Town and Village road networks have resulted from the agricultural character of the Town, the old settlements of Honey Creek and Honey Lake, water features and wetland areas, and development in the Village of Rochester. While territory and development along the Fox River are continuously linked by STH 36, residents along the southern Town border likely find access to shopping opportunities more convenient in the nearby Town of Burlington and new commercial development at the Town border near Teut Road and STH 36. Washington Avenue provides relatively convenient access to the Village of Rochester from the isolated Honey Creek area in the northwest corner of the Town. However, even though residents in the Honey Lake residential area in the southwest corner have two routes to the Village of Rochester via Oak Knoll Road and Academy Road, travel time is less to the City of Burlington where greater shopping and leisure activities exist. There is no north-south road network within the Town boundaries connecting developed areas in the northwest and southwest areas of the proposed territory. Such a connection does exist via County Trunk Highway DD just west of the border with the Town of Spring Prairie. The STH 36/83 bypass project near the Town of Burlington and Rochester border mentioned earlier in this determination will improve access from the Rochester area to the City of Burlington, likely increasing Rochester resident visits to Burlington for shopping and other social activities. The new interchange will also stimulate commercial development in the area, most of which would be expected to be in the Town of Burlington, since land in this area of Rochester is zoned primarily for residential use. The Department finds, due to landforms, lakes, watercourses, and development in the urban fringe area between the City of Burlington and the Town of Rochester that transportation access is not homogenous throughout consolidation area.

Previous political boundaries

The political boundaries of the territory petitioned for incorporation are largely those created by the existing survey township borders. This proposed consolidation would serve to cut off the southern growth area of the Village of Waterford on the east side of the Fox River, an area that, based on land use patterns and transportation network, exhibits more relationship to the Village of Waterford than to the proposed consolidated entity. It would also block development to the South within the City of Burlington Extraterritorial Zoning Boundary along STH 36 and South Teut

⁴¹ A Land and Water Resource Management Plan for Racine County: 2000-2004, p. 17.

Road. A Wal-Mart store was recently constructed near the Burlington-Rochester Town border in the Town of Burlington that will likely attract additional commercial and retail development in this area (in contrast to the residential character to the north and west, abutting the rear of the Wal-Mart facility). The proposed consolidation would also split the Honey Lake residential community between the Town of Spring Prairie and Town of Rochester, an area also within the extraterritorial planning jurisdiction of the City of Burlington.

With respect to the several intergovernmental agreements, the Petitioners and some participating municipalities should be congratulated on reaching harmonious accord. The Department notes, however, that scarcely any intergovernmental agreements were listed by the Petitioners between the Petitioners and the largest adjacent communities of the City of Burlington and Village of Waterford.⁴²

School district boundaries

As stated in previous Department determinations, school district boundaries are no longer subject to municipal influence, therefore the proposed consolidation will have no effect on school district boundaries. However, schools do have an impact in molding community allegiance through scholastic, social, and recreational activities. As noted earlier in this determination, territory containing the old settlement areas of Honey Lake and Honey Creek plus the southeast corner of the Town are in the School District of Burlington. The influence for Rochester is such that residents in the westerly and southeastern portions of the Town would be expected to have more of a relationship with the City of Burlington, rather than with the Village of Rochester, as students and parents likely frequent Burlington more often due to school related activities. The same is likely true for residents living in the Waterford Area School District and the adjacent, more highly developed Village of Waterford.

Shopping and social customs

Similarly, most shopping and social opportunities are more likely to occur within the City of Burlington or Village of Waterford, as the Village of Rochester has limited shopping and recreation facilities. By comparison, according to Wisconsin Department of Workforce Development data,⁴³ and information provided by the Petitioners⁴⁴ there are approximately 70 businesses in the Town and Village of Rochester, 200 in the Town and Village of Waterford, and nearly 500 in the Town and City of Burlington. In addition, compared to the Town of Rochester, the fairly developed nature of the Village's commercial areas, social groups, and parks and recreation opportunities all seem to suggest that most organized social activity is occurring at a much higher level within the Village rather than in the Town.

Conclusion

Map 29 Recommended Land Use Plan for the Town and Village of Rochester:2020⁴⁵ and produced by the Department from electronic data provided by the Petitioners as Map 7 in the appendix to this determination shows that the acreage designated as *low density* is scattered in 11 separate areas throughout the Town, and land classified as suburban residential is located in at least 8 separate areas. The Department finds that the Village and Town lands comprising the territory proposed for consolidation, when taken together as a whole, do not meet the homogeneity and compactness standard.

⁴² Town and Village of Rochester Consolidation Report, p. 81.

⁴³ Wisconsin Department of Workforce Development, Standard Name and Address Data December 2001

⁴⁴ Town and Village of Rochester Consolidation Report, p. 36.

⁴⁵ Recommended Land Use Plan for the Town and Village of Rochester: 2020, page 71.

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SECTION 1(B), TERRITORY BEYOND THE CORE

The standard to be applied as found in s. 66.0207(1)(b), Wis.Stats, and reads as follows:

The territory beyond the most densely populated one-half square mile specified in s. 66.0205 (1) or the most densely populated square mile specified in s. 66.0205 (2) shall have an average of more than 30 housing units per quarter section or an assessed value, as defined in s. 66.0217 (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. 66.0205 (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 imposes different tests depending upon whether or not the territory is intended to be incorporated either as an “isolated” or “metropolitan” city or village. The first part of this standard pertains only to “isolated” villages or cities, and permits one of two criteria to satisfy the standard: 30 housing units average per quarter section; or 25 percent or greater assessed value which is attributable to “existing or potential mercantile, manufacturing, or public utility uses.” Filing as a “metropolitan” village or city, as defined by the second sentence of (1)(b), requires the Department to find that territory lying beyond the most densely populated square mile shall have the potential for residential or other land use development on a substantial scale within three years, and authorizes the Department to waive those areas where “water, terrain, or geography presents such development.”

Although the Petitioners have filed as an “isolated” village, in consideration of the earlier discussion in Section 1 (a) Determination of Homogeneity and Compactness, and following pages relating to whether the petition is actually “isolated” or “metropolitan,” the Department will consider this standard from both perspectives. The most densely populated square mile of the territory proposed for consolidation, as specified in s. 66.0205(3), Wis. Stats., is the area contained in the southwest quarter of Section 2 and northwest quarter section of Section 11. This area is located in the center of the Village of Rochester. This area includes medium-density residential dwellings, and commercial developments. Much of the area beyond this most densely populated core within the Village of Rochester is also developed.

Section 1(b) Territory Beyond the Core Determination

When considering the entire area proposed for consolidation, much of the land in the Town of Rochester is dominated by agriculture, along with other lands (such as environmental corridors) identified by petitioners as not suitable for development either by regulation or physiography. In the Consolidation report, Petitioners request that 36.84 quarter sections, or approximately 9.21 square miles be exempted in order to meet the requirement of 30 average housing units per quarter-section.⁴⁶ The Department finds that this request is reasonable and that the land proposed for consolidation meets the “isolated” standard of having 30 housing units per quarter section. However, the territory *does not* meet the “metropolitan” standard for development on a substantial scale within the next three years, as the majority of the territory is not in a sewer service area, nor within a sanitary sewer or town utility district. Further, the Town has not taken steps to preserve agricultural lands and has developed, and plans to develop in a scattered manner, as evidenced by Petitioners’ Map 18 Existing Land Use in the Rochester Planning Area:

⁴⁶ Town and Village of Rochester Consolidation Report, p. 59.

1995⁴⁷. This map shows scattered, large-lot residential development throughout the territory, primarily along major roads, including several pockets of unrelated higher density residential development. Table 23 Planned Land Use in the Rochester Planning Area: 2020 identifies that only 10.5% of the land in the proposed consolidation area is destined for residential development, and only 1.5% for commercial, industrial, government or institutional use. This scattered-site development pattern is likely to continue given the levels of density proposed in the *Land Use Plan for the Town and Village of Rochester: 2020*.

Table 6 Rochester Area Population Projection on the following page shows projected growth rates calculated by the Department based upon information provided in Table 23 Planned Land Use in the Rochester Planning Area: 2020.

Columns are labeled A through I and are explained below:

Column A: The land use category listed in the *Land Use Plan for the Town and Village of Rochester: 2020* that provides the dwelling density range for each land use category.

Column B: The square feet per dwelling site calculated for the high and low density given for each land use category.

Column C: The dwellings per acre calculated for the high and low density for each land use category.

Column D: The population range per square mile assuming there are 2.75 people per household at the listed dwellings per acre.

Column E: The number of acres designated for each land use category in Table 23 of the *Land Use Plan for the Town and Village of Rochester: 2020*.

Column F: The percentage of the total residential development acreage allocated for each land use category.

Column G: The estimated additional population that would result at the high and low density rates listed for each land use category.

Column H: The estimated new housing units per square mile that could be built at the given high and low housing unit density for each land use category.

Column I: The estimated number of new housing units that could actually be built at the high and low density rates on the acreage allocated for each land use category.

The potential total high and low population level for all categories are calculated below the table and shows the number of years needed to reach the potential population at various rates of population growth. The Department notes that the average annual rate of growth for the Town of Rochester between 2000 and 2003 has been 1.5%, and that the average for Racine County for the same period has been about .4%.

Even if the Department optimistically uses a 2% annual growth rate, the housing units added at the highest planned density rate would be approximately 36 per year, or about 29 units per year at the lower density rate. As identified earlier in this determination, the Town has been approving approximately 20 new housing units per year for the past 5 years. Given that the majority of the potential population is in the acreage designated as low density (72.2%), much of it will be dependent upon on-site sewer systems and private wells, since much of this acreage is beyond the core, and not within the planned urban service area. This could have a dampening effect on growth in the territory beyond the core tending the Department to believe that overall annual

⁴⁷ Ibid, page 17.

SECTION 1(B) TERRITORY BEYOND THE CORE

growth rate would be less than 2%. For these reasons, the Department does not consider the potential growth within the next 3 years to be *substantial*. As stated at the beginning of this section, the requirement for development on a substantial scale within the next three years, has not been met, therefore the petition does not meet the standard for Section 1(b) Territory Beyond the Core.

Table 6 Rochester Area Population Projection

A Land Use Category	B Sq. Ft. per Dwelling Site Range		C Dwellings per Acre at Stated Density		D Population Range per sq. mile (assuming 2.75 persons per household)		E Designated Acres in Land Use Plan	F Percentage of Total Residential Development Acreage	G Estimated Additional Population Range		H New Housing Units per sq. mile		I Estimated New Housing Units in Available Acreage	
	High	Low	High	Low	High	Low			High	Low	High	Low	High	Low
Suburban Density (1.5 to 4.99 acres per dwelling)	65,340	217,364	0.67	0.20	1,173	353	77	15.7%	141	42	427	128	51	15
Low Density (19,000 sq. ft. to 1.49 acres per dwelling)	19,000	64,904	2.29	0.67	4,035	1,181	354	72.2%	2,232	653	1,467	430	812	238
Medium Density (6,200 to 18,999 square feet per dwelling)	6,200	18,999	7.03	2.29	12,365	4,035	59	12.0%	1,140	372	4,497	1,467	415	135
Total							490	100.0%	3,513	1,068	6,390	2,025	1,277	388

Estimated Town and Village Population in 2003

3,501

Potential Population with Proposed Levels of Buildout

	High	Low
7,014	4,569	
% Increase		
100%	30%	

Percentage Population Increase

Annual Rate of Population Growth	Percentage Population Increase		← Years to reach projected population at listed rate of growth	Average # New Housing Units Added/Year	
	100%	30%		High	Low
6%	11.9	4.6		107	85
5%	14.2	5.5		90	71
4%	17.7	6.8		72	57
3%	23.5	9.0		54	43
2%	35.1	13.4		36	29
1%	69.8	26.8		18	15

SECTION 2(A) TAX REVENUE

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

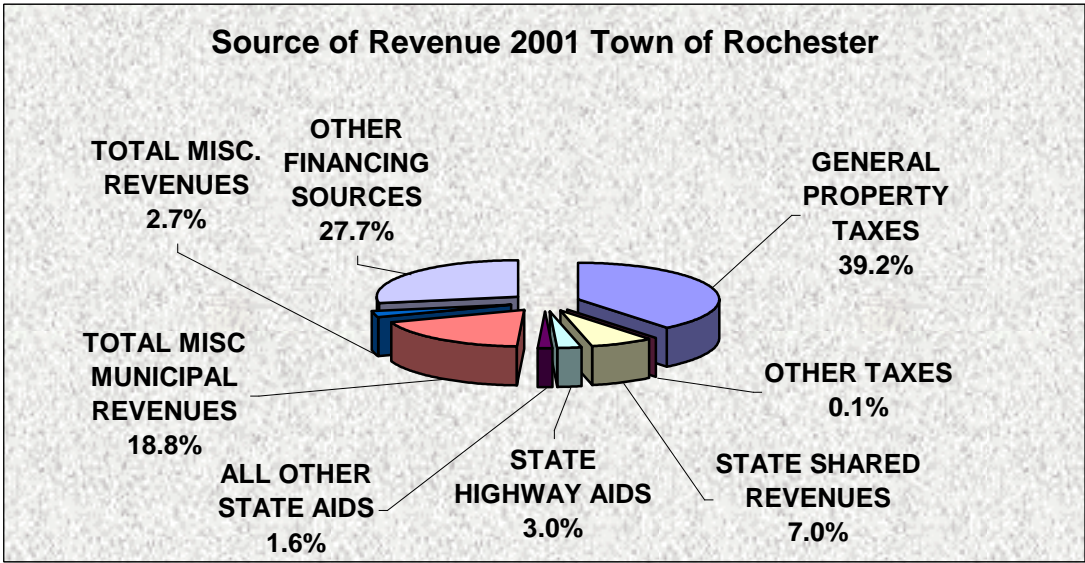
The present and potential sources of tax revenue appear sufficient to defray the anticipated cost of governmental services at a local tax rate which compares favorably with the tax rate in a similar area for the same level of services.

Local service expenditures vary greatly across Wisconsin communities and are determined by the needs and expectations of the local populace. For this reason, the Department recognizes the need for a range of service levels and does not hold communities to fixed standards. With this consideration in mind, the Department compares municipalities sharing similar characteristics to determine whether a proposed budget is generally reasonable and able to support the desired level of municipal services. Petitioners submit that consolidation of the two communities would have minimal impact on Town and Village mill rates and would increase level of services.⁴⁸

Revenue

As seen in the following two graphs, the Village and Town of Rochester have small differences among 2001 sources of revenue as reported to the Wisconsin Department of Revenue other than the Village being more dependent upon State Shared Revenue Payments.⁴⁹

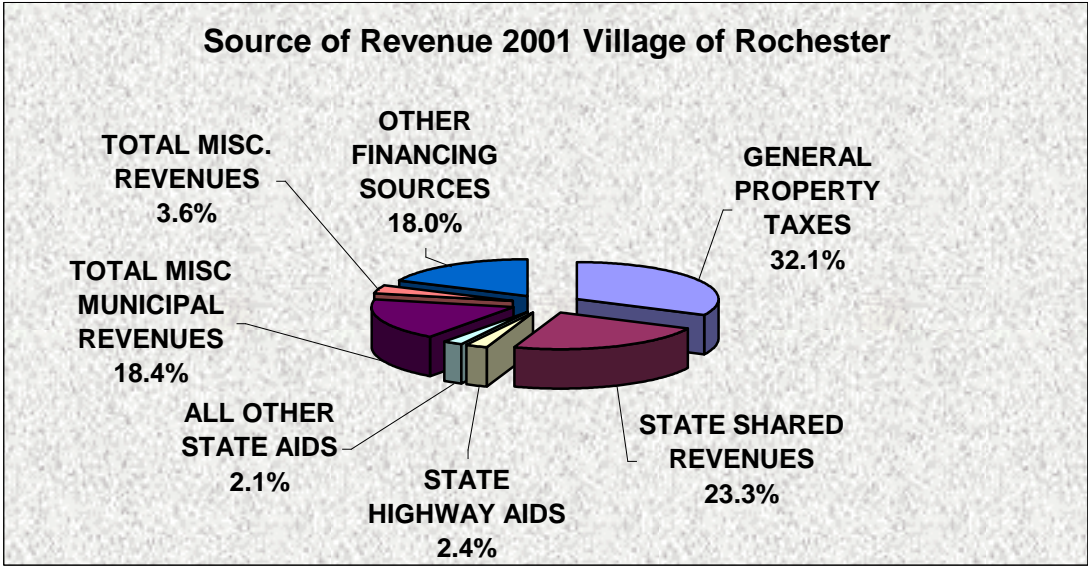
Figure 1 Town of Rochester Source of Revenue



⁴⁸ Town and Village of Rochester Consolidation Report, p. 61

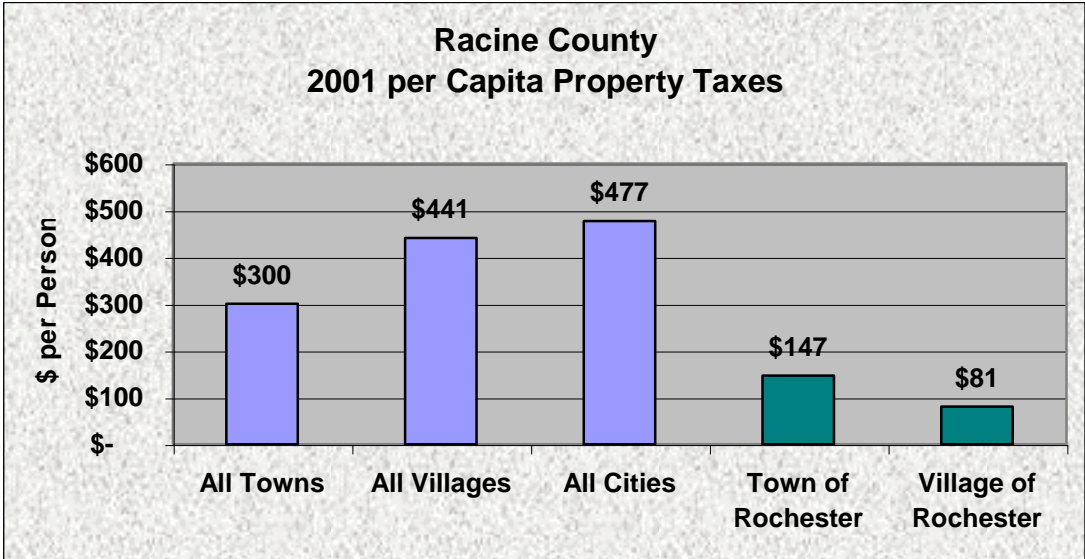
⁴⁹ Wisconsin Department of Revenue, County and Municipal Expenditures, 2001.

Figure 2 Village of Rochester Source of Revenue



As seen in the following graph, property taxes received by the Town and Village of Rochester are substantially lower per per capita than other Racine County Municipalities.

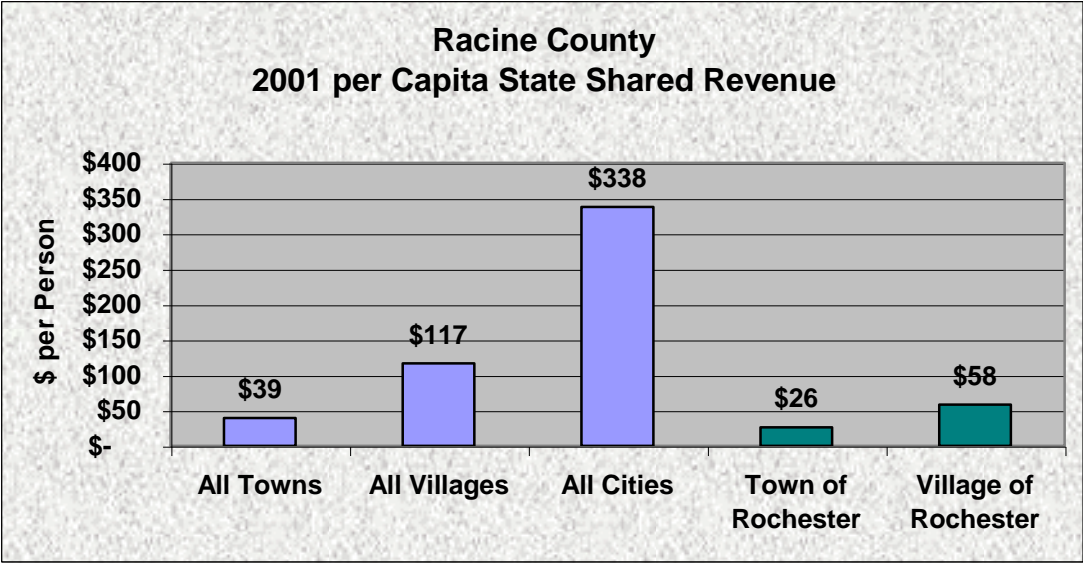
Figure 3 Racine County per Capita Property Taxes



State Shared Revenues

Due to Wisconsin’s fiscal crisis, state shared revenues returned to local governments are being reduced in all Wisconsin municipalities. The Town and Village of Rochester received a lower amount of state shared revenues in 2001, compared to other Racine County municipalities, as seen in the following chart.

Figure 4 Racine County Per Capita State Shared Revenue



The Town and Village of Rochester also receive less State Shared Revenue per capita than other Racine County towns and villages.

The Town and Village of Rochester will need to increase taxes or decrease costs to accommodate the decreased revenues. The following tables show the amount of decrease of state shared revenues from 2001 to 2004.⁵⁰ Although considered a potential hardship, the Department predicts that the Town and Village have the necessary resources to adequately absorb the shared revenue reductions, as have other Wisconsin municipalities.

⁵⁰ Estimated 2004 Shared Revenue, Expenditure Restraint and SMSR Payments, Wisconsin Department of Revenue

Figure 5 State Shared Revenues

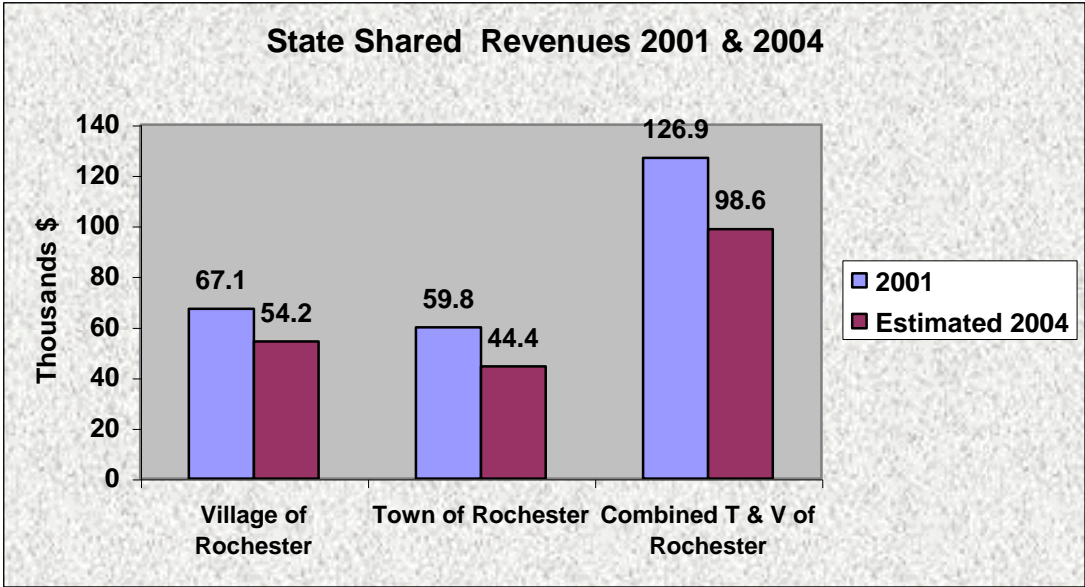
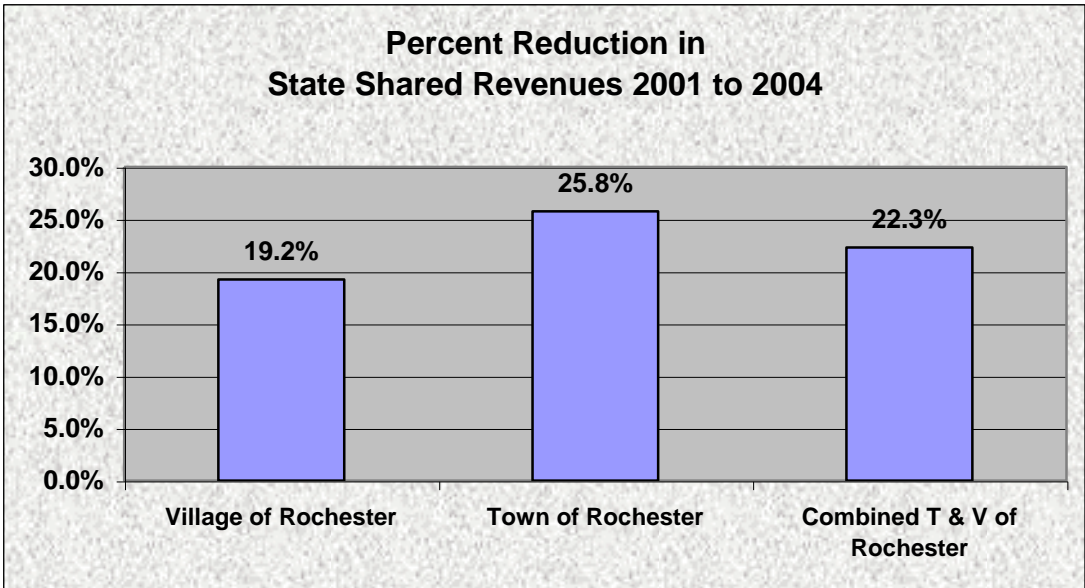


Figure 6 Percent Reduction in State Shared Revenues



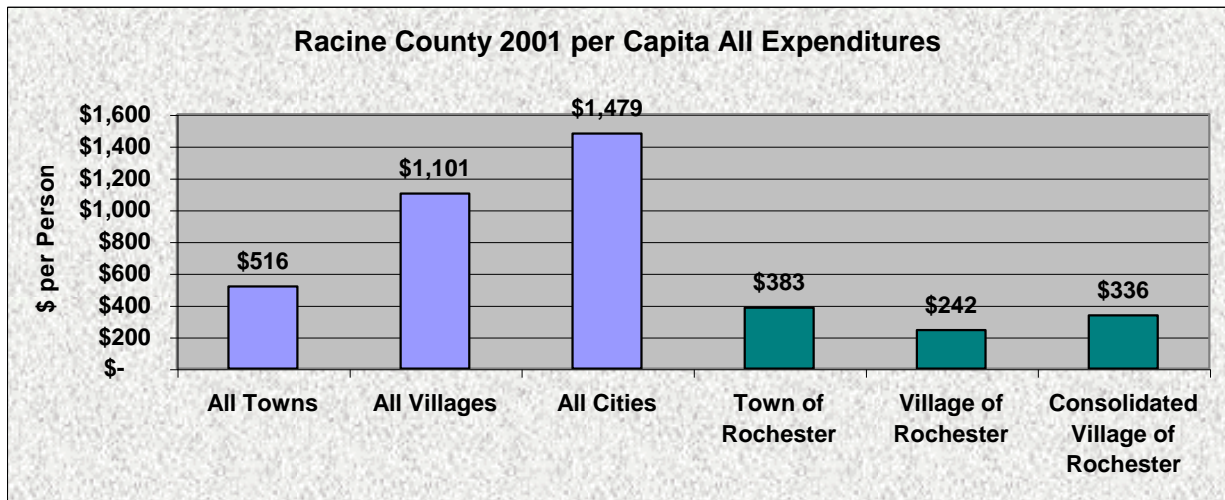
Expenditures

The Village and Town of Rochester estimate the consolidated budget total to be the same as the sum of the separate Town and Village 2001 budgets. The Consolidation Report indicated that the goal of the new budget was to have minimal impact on the Town and Village mill rates, while increasing service levels to provide for anticipated growth and development.⁵¹

⁵¹ Town and Village of Rochester Consolidation Report, p. 61.

Even though no cost savings are anticipated from consolidation in the total budget, the petitioners have identified cost savings in General Government spending, and other areas that the petitioners plan to reallocate to other areas of the budget categories to improve government services. These budget changes are detailed in the Consolidation Report.⁵² The following graphs depict how the Town and Village expenditures for various categories compare to other Racine County municipalities.

Figure 7: Racine County Expenditures per Person



As can be observed in the preceding chart, the Town and Village of Rochester spent considerably less per capita than other Racine County towns and villages. Racine County Towns, on average spent approximately 1.3 times more per capita than the Town of Rochester, and Racine County Villages spent about 4.5 times more per capita than the Village of Rochester, or 3.2 times more than a consolidated Village. This is most likely due to the lower level of services provided in the Rochester municipalities.

⁵² Ibid., pages. 61-75

The following charts show the distribution by percentage of Town and Village expenditures.

Figure 8: Town of Rochester Expenditures

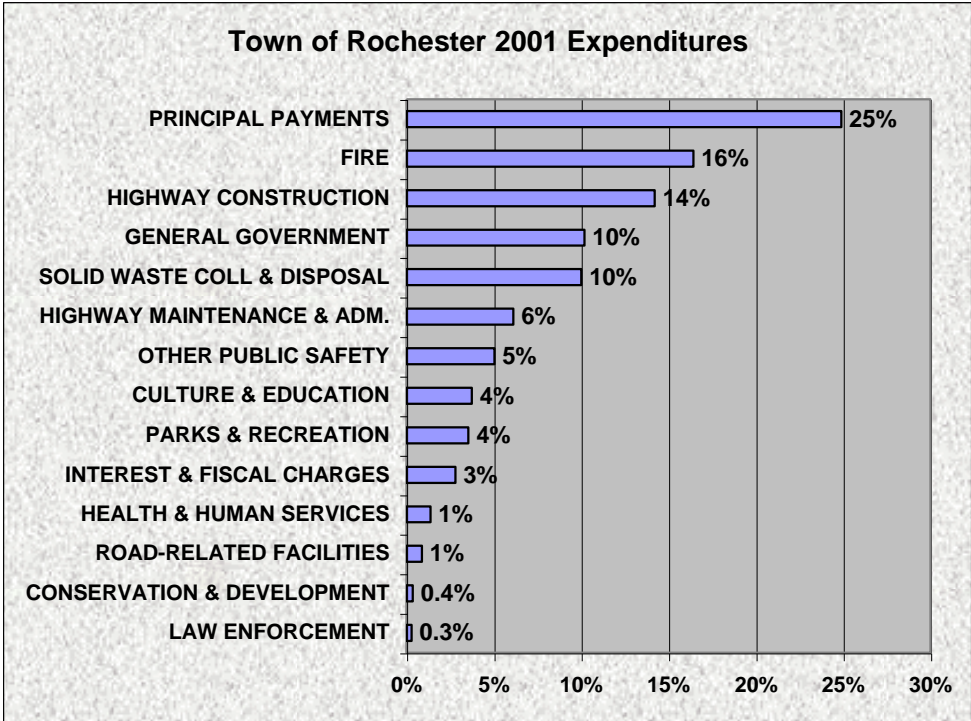


Figure 9: Village of Rochester Expenditures

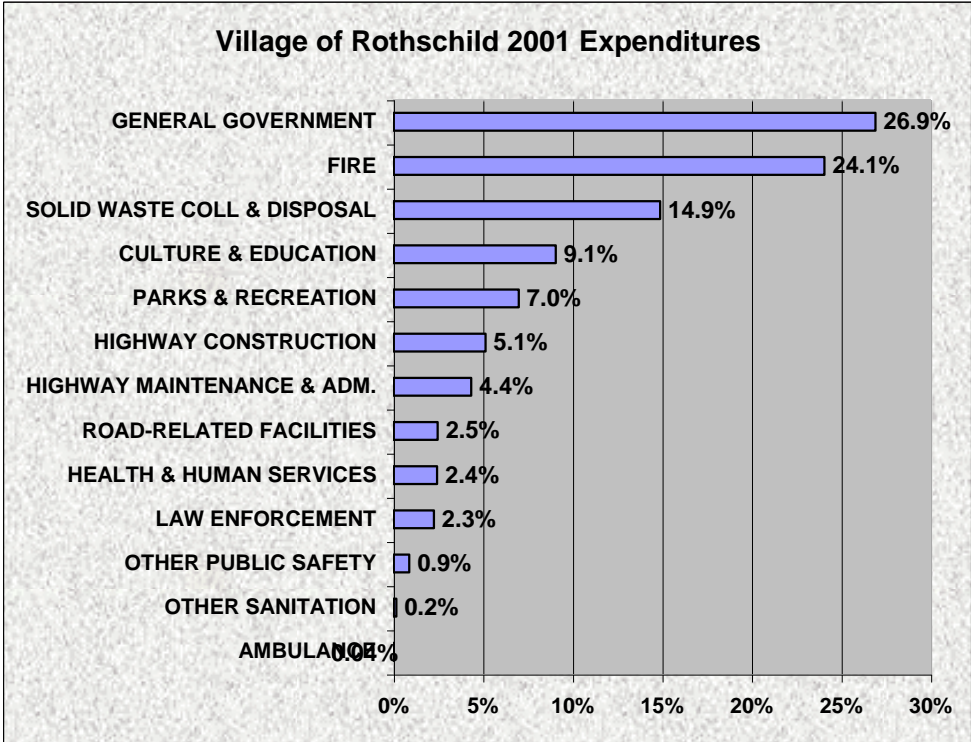
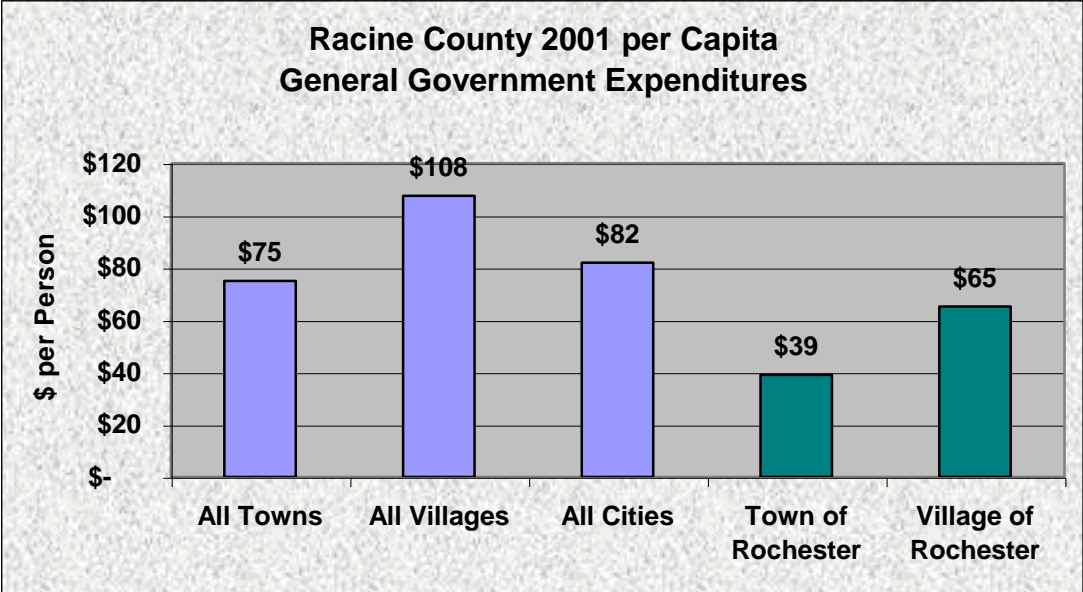
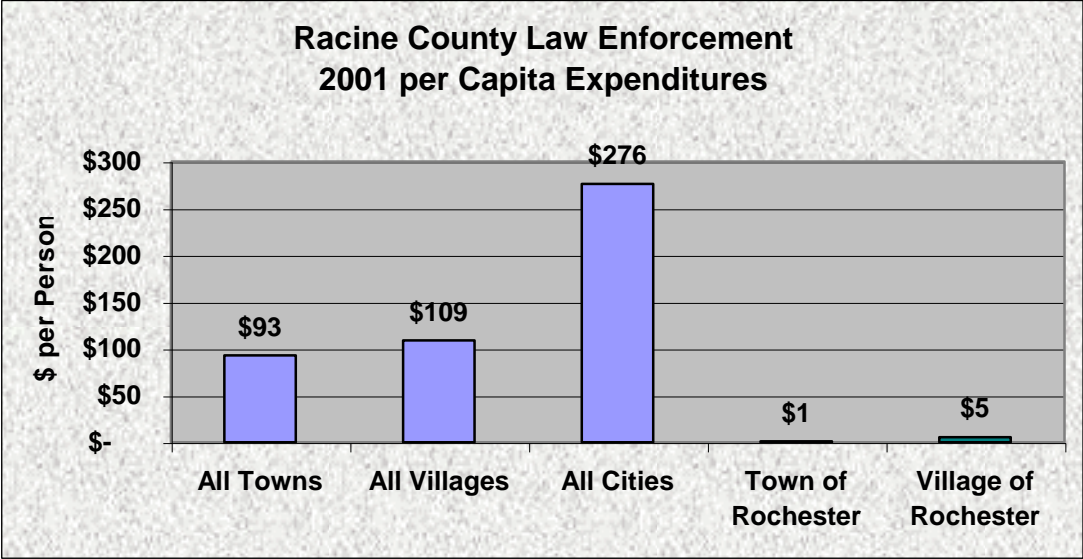


Figure 10: Racine County General Government Expenditures



Per Capita expenditures for general government in both the Town and Village of Rochester were considerably lower than other Racine County municipalities.

Figure 11: Racine County Law Enforcement Expenditures

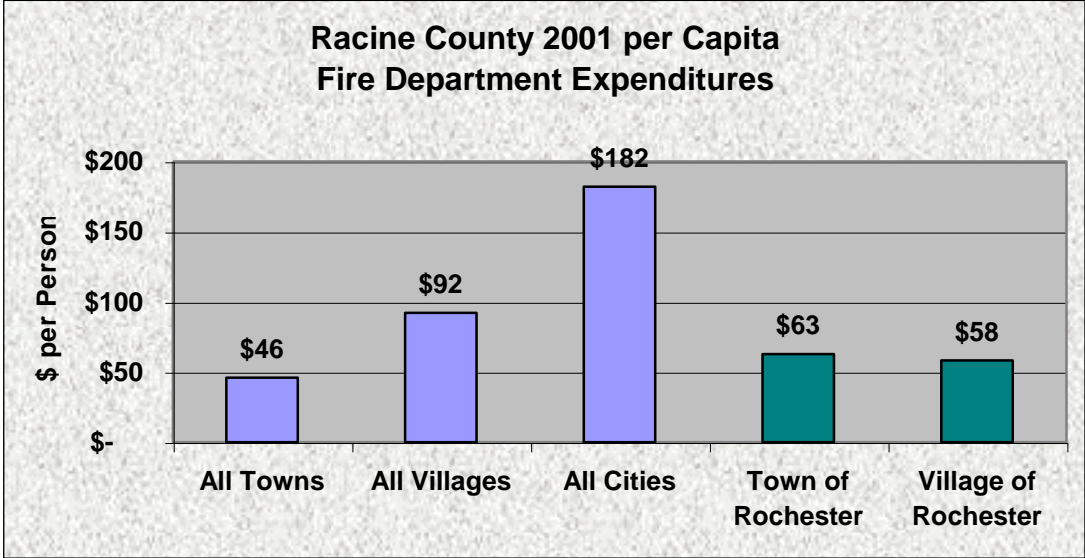


The Town and Village are both spending substantially below per capita for law enforcement than other Racine County Towns and Villages. Law enforcement is provided by contract⁵³ with an agency unspecified by the petitioners (presumably still with the Racine County Sheriff⁵⁴).

⁵³ Town and Village of Rochester Consolidation Report, page 69.

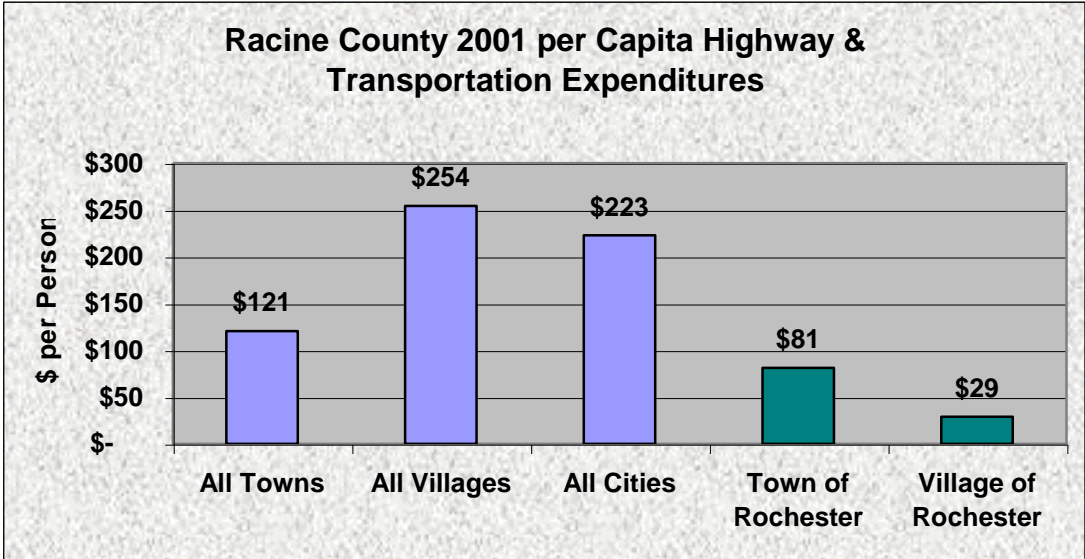
⁵⁴ The Land Use Plan for the Town and Village of Rochester: 2020 indicates that in 1995, police protection within the planning area was provided by the Racine County Sheriff, page 49.

Figure 12: Racine County Fire Department Expenditures



With respect to fire expenditures, the Town was spending considerably more per capita than other Racine County towns, and the Village spent considerably less per capita than other Racine County villages. Fire Protection is provided by contract with the Rochester Volunteer Fire Company.⁵⁵

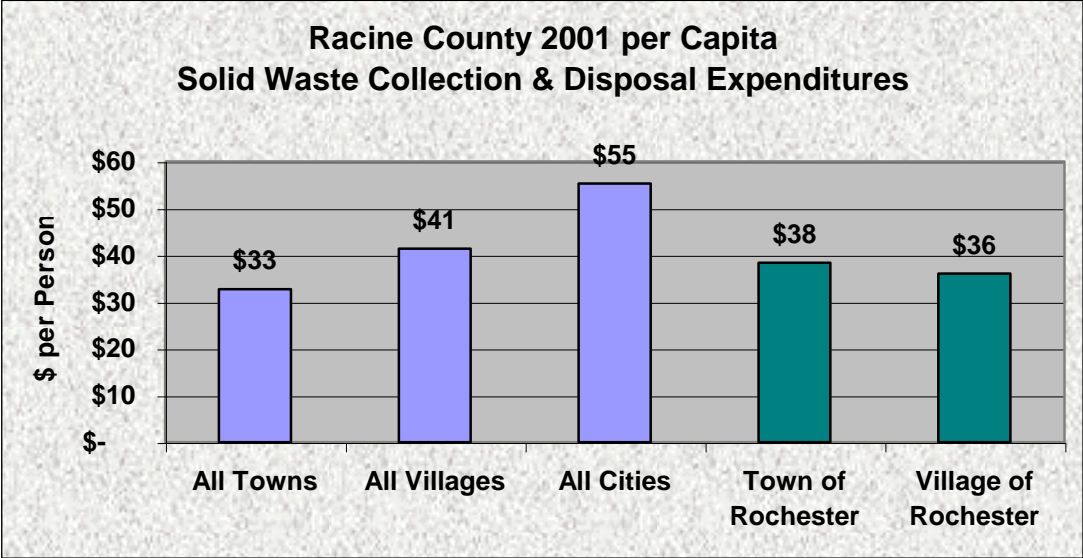
Figure 13: Racine County Highway & Transportation Expenditures



Both the Town and Village of Rochester expended considerably less per capita than other Racine County Towns and Villages in 2001 on highway and transportation maintenance and improvement.

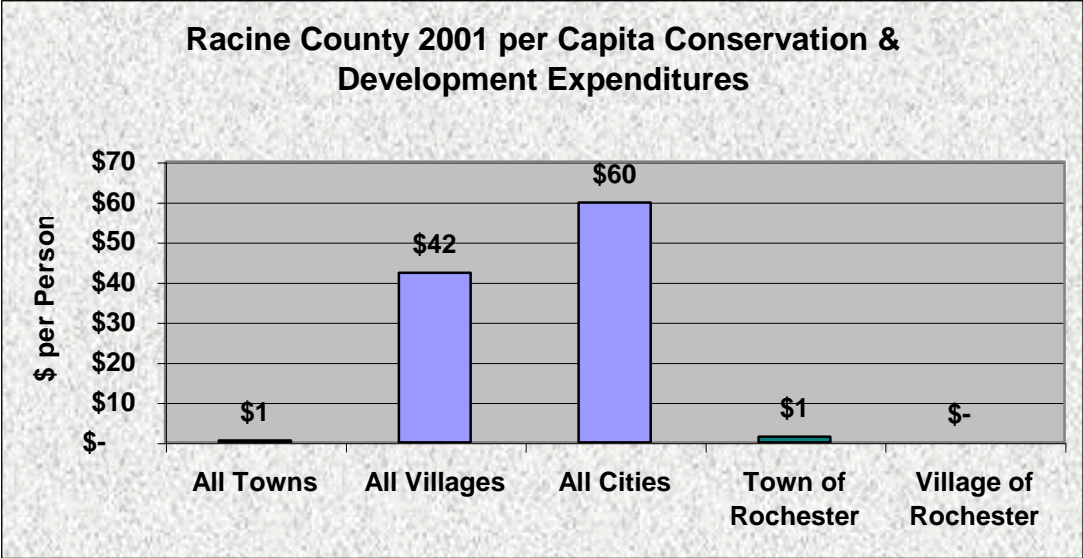
⁵⁵ A Land Use Plan for the Town and Village of Rochester: 2020, page 49.

Figure 14: Racine County Solid Waste Collection & Disposal Expenditures

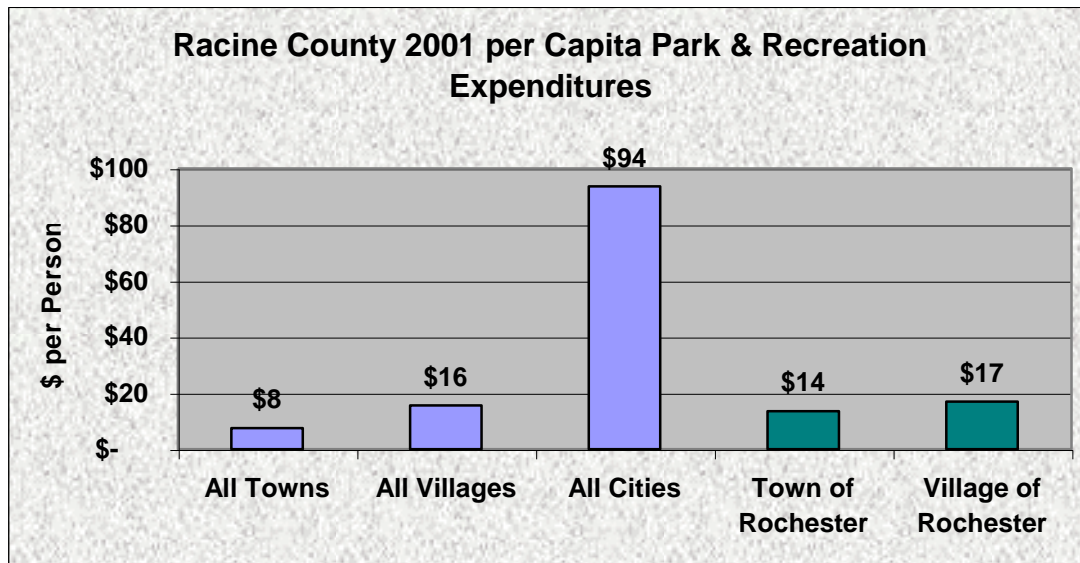


Per capita expenditures for solid waste collection and disposal in 2001 were similar to other Racine County towns and villages.

Figure 15: Racine County Conservation & Development Expenditures



Per Capita expenditures for conservation and development were similar between the Town of Rochester and other Racine County Towns, but the Village of Rochester reported no expenditures for Conservation and Development in 1999, 2000, or 2001.

Figure 16: Racine County Park & Recreation Expenditures

Expenditures for Town and Village expenditures per capita for Park and Recreation were similar in Racine County.

Petitioners provided no analysis for the most expensive of the public services, including condition of public infrastructure (roads, water and sewage treatment and distribution systems, along with public buildings), prospective capital improvement budgets, and levels of fire and police protection, including Insurance Services Organization (ISO) analysis of the fire department and the type and number of incidents responded to by the police department. The provision of these items under consolidation is assumed to be constant, whereas a new political body and combined electorate could easily exert other priorities and preferences.

Municipal Debt

In 2002 the Town of Rochester had approximately 9 times the debt of the Village. The Village of Rochester's debt of \$42,588 was less than 1 % of 2002 equalized value. The Town of Rochester's debt of \$390,082 in 2002 was .21 % of 2002 equalized value. As allowable debt limit for Wisconsin municipalities is 5%, both communities are well within their debt limits,⁵⁶ and there is considerable potential for these expenditures to increase, if level of services were increased to be similar to adjacent communities.

Property Tax Base

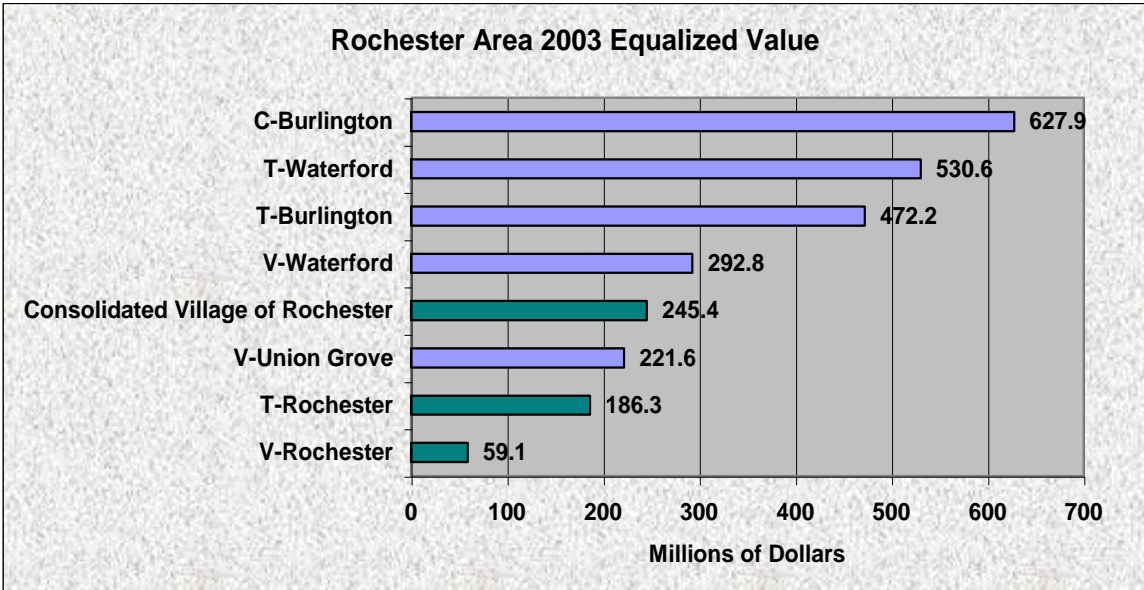
The Town of Rochester as of January 1, 2000 had over three times the equalized value of the Village: Town of Rochester = \$142,460,000; Village of Rochester = \$46,449,500. Consolidation at that time would have resulted in a village with a total equalized value of \$188,909,500.⁵⁷ As of 2003, the Town equalized value was \$186,294,000, and \$59,120,900 for the Village for a total of \$245,414,900, which equates to a combined increase of nearly 30 %.⁵⁸

⁵⁶ Wisconsin Department of Revenue, Allowable vs. Actual Debt by Municipality, 12/15/2003.

⁵⁷ Wisconsin Department of Revenue, Town Village City Taxes Levied 2000-Collected 2001

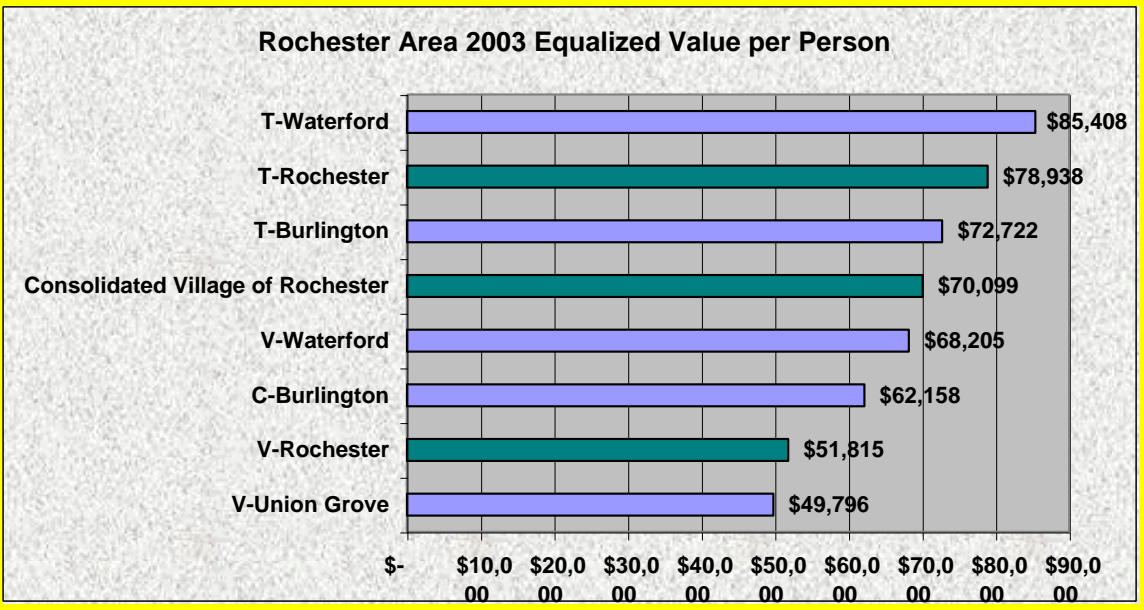
⁵⁸ Wisconsin Department of Revenue, Statement of Changes in Equalized Value 2003.

Figure 17: Select Rochester Area Communities Equalized Value



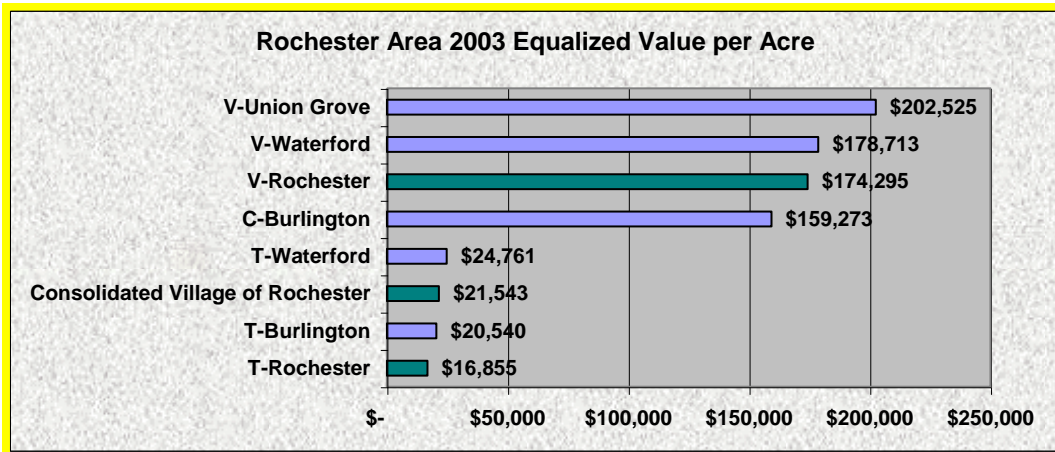
Compared to other nearby communities, individually, the Town and Village of Rochester have a much lower equalized value. If the Town and Village were consolidated, their combined value would be near that of the adjacent Village of Waterford.

Figure 18: Select Rochester Area Communities Equalized Value per Person



On a per capita basis, however, the Town and Village of Rochester are similar in equalized value compared to other area communities.

Figure 19: Select Rochester Area Community Equalized Value per Acre



Equalized value calculations per acre, however, show that a consolidated Village of Rochester would have an equalized value more similar to adjacent towns than villages, due to the large number of acres proposed for consolidation.

Property Tax Rates

The following Table lists the amount of 2001 tax that were paid for the Town and Village of Rochester at various market values, and what they would have been for a consolidated Village.

Figure 20 Existing and Consolidated Village 2001 Property Tax and Mill Rates

Market Value	2001 Mill Rate Per \$1,000 Assessed Property Value		
	Town of Rochester	Village of Rochester	Consolidated Village of Rochester
	\$20.04	\$20.07	\$20.05
Estimated Property Tax			
\$ 100,000	\$2,004.00	\$2,007.00	\$2,005.00
\$ 150,000	\$3,006.00	\$3,010.50	\$3,007.50
\$ 200,000	\$4,008.00	\$4,014.00	\$4,010.00
\$ 250,000	\$5,010.00	\$5,017.50	\$5,012.50
\$ 300,000	\$6,012.00	\$6,021.00	\$6,015.00
\$ 1,000,000	\$20,040.00	\$20,070.00	\$20,050.00

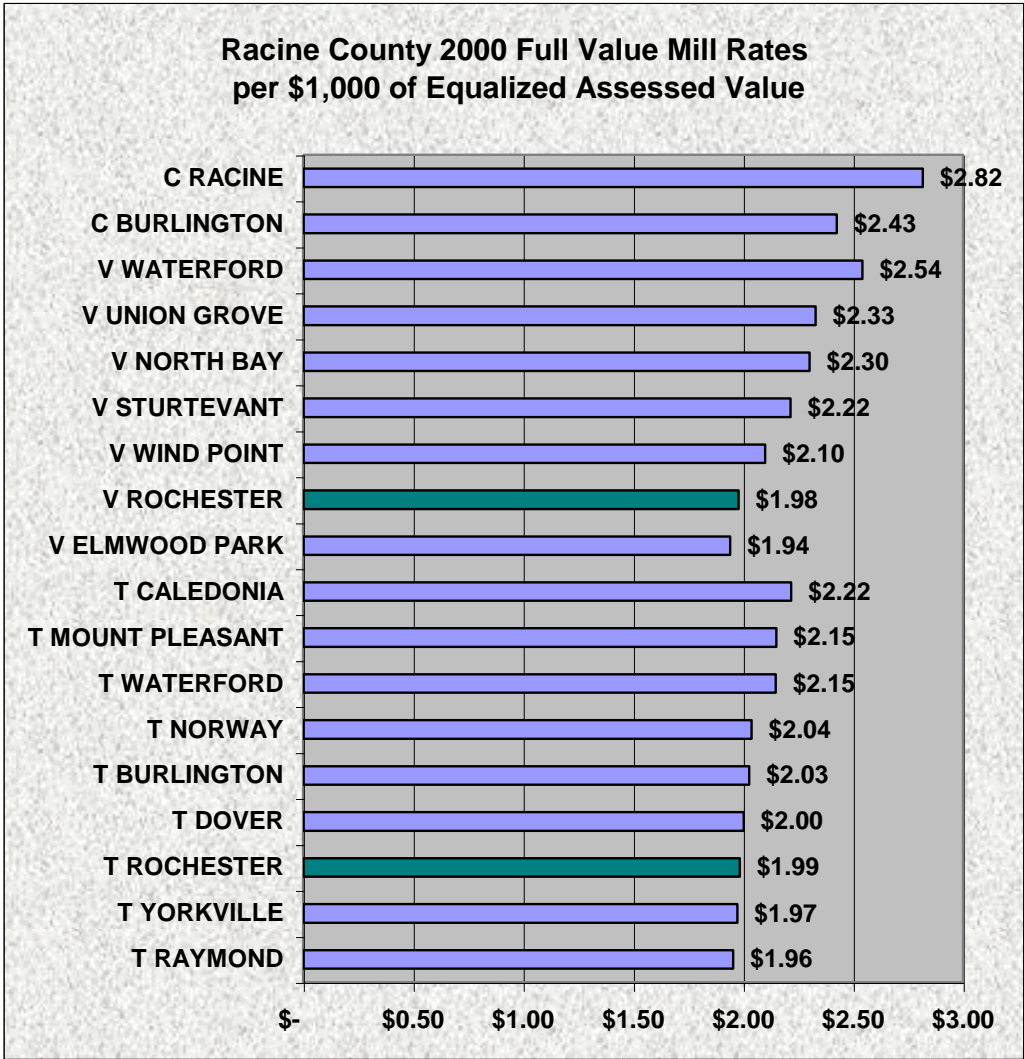
Table prepared by Department staff Using Town, Village, and City Taxes 2001, Wisconsin Department of Revenue

As can be observed in the following table, the consolidation will result in minor increases for Town property owners, and more substantial decreases for Village property owners. The consolidation would result in a .10% decrease for Village residents and a .05% increase for the Town residents.

Figure 21 Projected Tax Impact on Village and Town Property Owners⁵⁹

Market Value	2001 Tax Impact % Change	
	Town of Rochester	Village of Rochester
	0.05%	-0.10%
Estimated Property Tax Increase or Decrease		
\$ 100,000	\$ 49.90	\$ (99.65)
\$ 150,000	\$ 74.85	\$ (149.48)
\$ 200,000	\$ 99.80	\$ (199.30)
\$ 250,000	\$ 124.75	\$ (249.13)
\$ 300,000	\$ 149.70	\$ (298.95)
\$ 1,000,000	\$ 499.00	\$ (996.51)

Figure 22: Racine County Mill Rates



⁵⁹ Table prepared by Department staff with data from Town, Village, and City Taxes 2001, Wisconsin Department of Revenue

Section 2(A) Determination

Based on the foregoing financial information, the Department has determined that the consolidated budget is reasonable *given the present level of services provided* (however, preferences for types and levels of services and capital expenditures may well change and need to change to be comparable and competitive with other Racine County municipalities). The Department has some concern that the proposed consolidation would have difficulty providing a uniform level of services comparable with adjacent jurisdictions due to the low population distributed over the large territory of a combined Village and Town of Rochester. There is sufficient tax base from which to provide the *present level of services* at a tax rate that compares favorably with tax rates in similar areas, therefore this standard is met.

SECTION 2(B) LEVEL OF SERVICES

The standard to be applied is found in s. 66.0207(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 §66.0203(6), Wis. Stats.

No certified copy of a resolution to annex the territory as provided for by s. 66.0203(6), Wis.Stats., was submitted to the circuit court. Therefore, this standard is not applicable.

SECTION 2(C) IMPACT ON THE REMAINDER OF THE TOWN

The standard to be applied is found in s. 66.0207(2)(c), Wis. Stats., and provides as follows:

The impact, financial and otherwise, upon the remainder of the town from which the territory is to be incorporated.

This requirement does not apply because the consolidation of the entire Town and Village of Rochester is the subject of this proceeding that would result in no remainder of the town.

SECTION 2(D), IMPACT UPON THE METROPOLITAN COMMUNITY

The standard to be applied is found in s. 66.0207(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.

“Metropolitan community” is defined 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.⁶⁰

As noted previously in Section 1 (A) of this Determination, the Department finds that the consolidation falls within the metropolitan communities comprising the cities of Burlington, Muskego, Franklin and Oak Creek. While Rochester’s northeastern boundary is approximately six miles from the City of Muskego boundary, contiguous sections of land in the Towns of Norway, Waterford, and the Village of Waterford have surpassed the “100 persons or more per square mile” standard in the statute.

Some of these communities share similar natural features and environmental resources including a natural drainage basin system that creates metropolitan-wide recreational opportunities as well as policy challenges such as the siting of municipal wells, maintaining farmland in the face of development pressure, and providing a coordinated response to transportation and other issues associated with urban development.

The Department is required by statute to consider the impact of the proposed consolidation 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 metropolitan impact, as indicated by the court in *Westring v. James*:⁶¹

*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.”*⁶²

A “metropolitan impact standard” review includes consideration of the existence of land use plans, adopted either by the county or by neighboring jurisdictions that may suggest how the territory petitioned for incorporation would otherwise be developed and served. Existing planning implementation mechanisms are reviewed for potential conflicts in the community visions

⁶⁰ §66.0201(2)(c), Wis.Stats.

⁶¹ *Westring v. James*, 71 Wis.2d 462 (1975).

⁶² 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).

reflected by these plans. The Department must also determine that Petitioners have established that the proposed consolidation will not have a negative impact on metropolitan issues such as service provision, infrastructure development and maintenance, environmental resource protection, and relatively low local-purpose property tax rate coupled with an apparent propensity to allow development to occur anywhere outside of the environmental corridors.

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.*⁶³

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 conclusion that the outlying areas do not have an independent viability, but a viability that is dependent upon the adjacent metropolis.*⁶⁴

The Town and Village of Rochester are located in the Racine metropolitan region, where area municipalities are influenced by development at the urban/rural interface that affects regional economic, social and environmental conditions.

In this particular instance, we cannot conclusively state whether or not a permanently fixed boundary could inhibit the existing City of Burlington’s and Village of Waterford’s growth and planning needs.

Housing

The Village of Rochester provides a wider diversity of housing types and ownership options for residents than the Town of Rochester, which is dominated by single family housing as listed in Table 15 below and depicted graphically in Figure 23 and Figure 24. Mobile homes are not present in either the Town or Village.

Table 7: Housing Unit Quantity and Type

Type of housing	Town of Rochester Number and Percentage of Units	Village of Rochester Number and Percentage of Units
1 unit detached	742 (90.8%)	269 (63.1%)
1 unit attached	12 (1.5%)	17 (1.5%)
2 units	22(2.7%)	65 (15.3%)
3 or 4 units	8 (2.3%)	14 (1.0%)
5 to 9 units	28 (3.4%)	25 (5.9%)
10-19 units	0 (0%)	6 (1.4%)
20 or more units	5 (.6%)	30 (7.0%)
Mobile homes	0 (0%)	0 (0%)

⁶³ *Pleasant Prairie v Local Affairs Dept.*, 108 Wis.2d 465 (1982), pg 481.

⁶⁴ *Pleasant Prairie (II) v. Local Affairs Dept.*, 113 Wis.2d 327 (1983), pg. 333.

Source: *Units In Structure for all Housing Units for Wisconsin Counties and Municipalities, April 1, 2000, Demographic Services Center, Wisconsin Department of Administration.*

Figure 23: Town of Rochester Housing Units

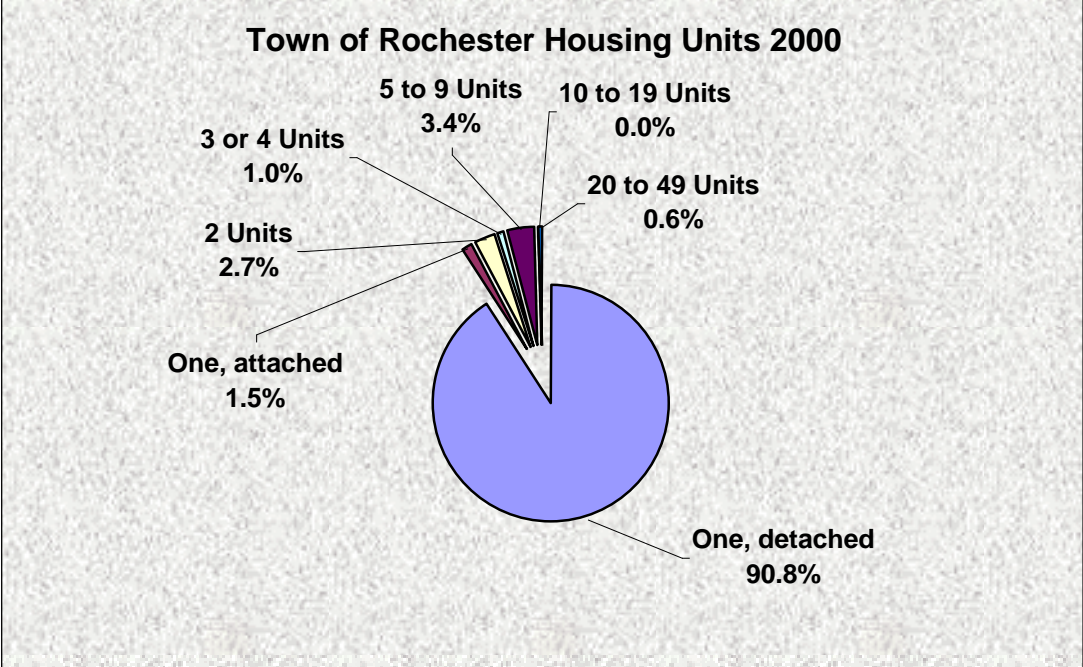
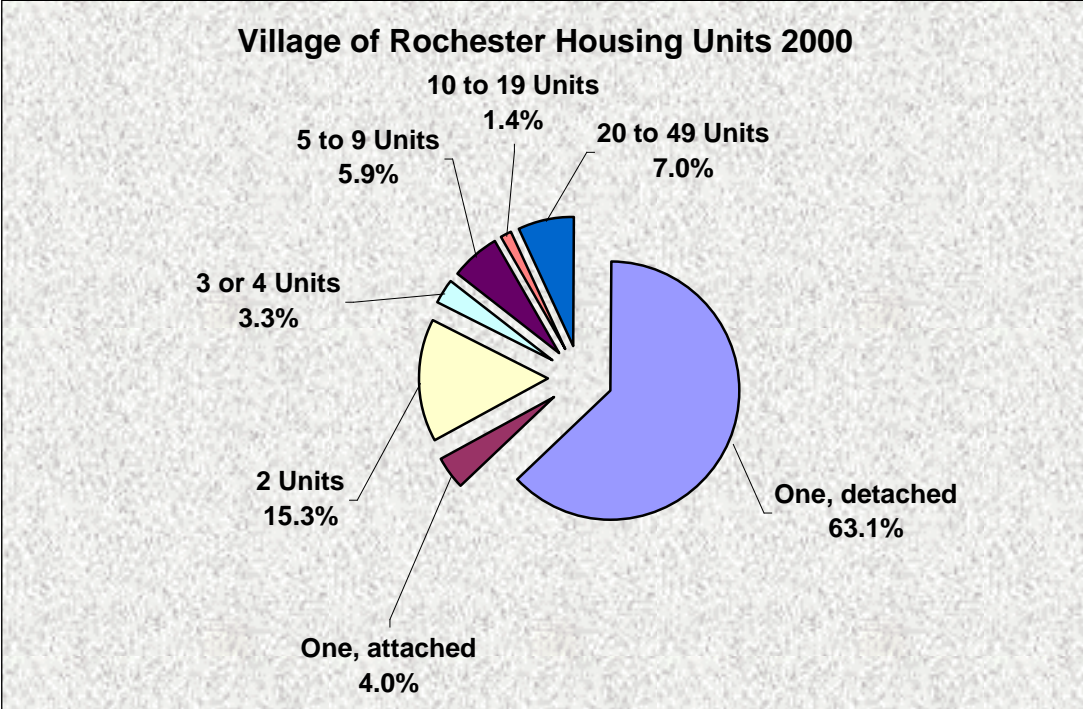


Figure 24: Village of Rochester Housing Units



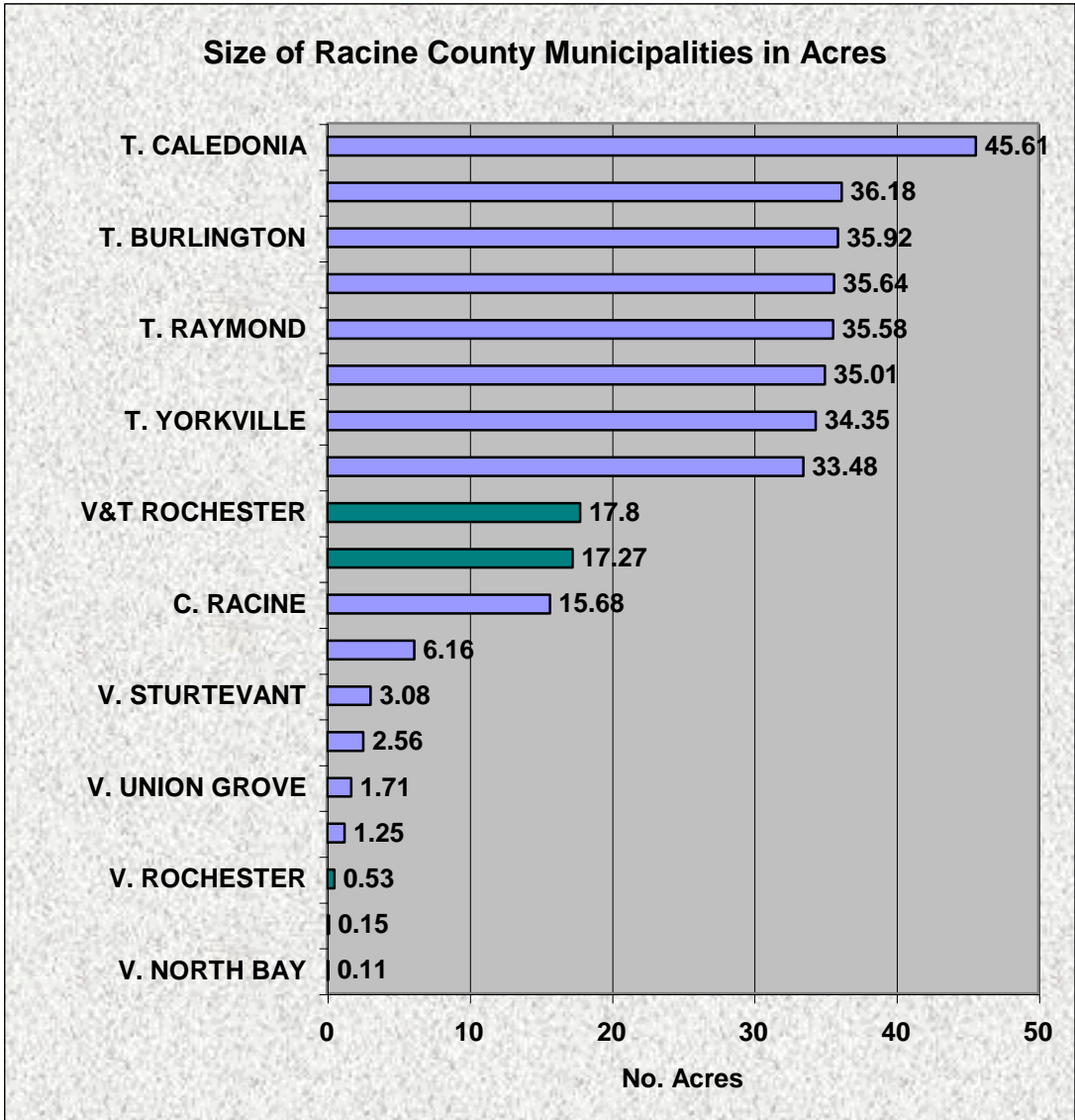
SECTION 2(D) IMPACT UPON THE METROPOLITAN COMMUNITY

Ownership options vary to include owner-occupied, rental, condominium, and leased housing. The Village and Town of Rochester do not address housing stock in their Consolidation Report, or land use plan. The 2000 Census indicated that more than 86% of the housing stock in the Town of Rochester was owner occupied, and 67% owner occupied in the Village. The variety of housing-related choices suggests that people of all ages and incomes can live in the Village of Rochester, yet the Town of Rochester does not have the same level of diversity to help fulfill regional housing needs.

Territory Proposed for Incorporation

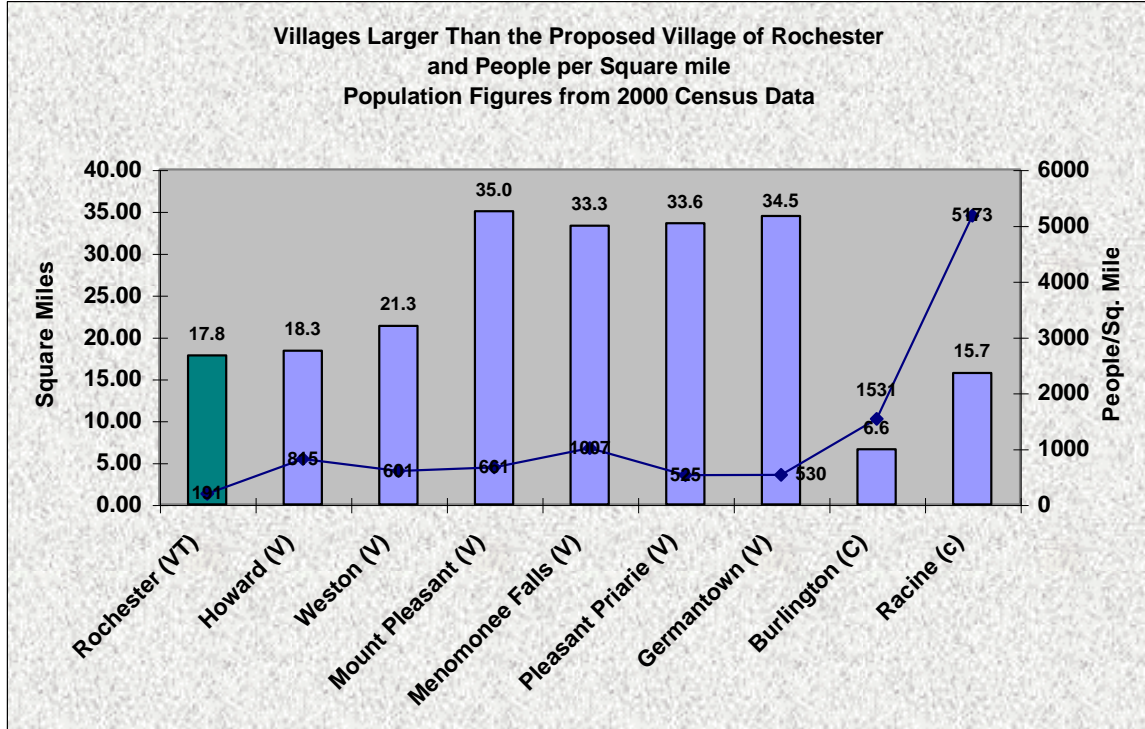
The territory proposed for consolidation would create a community very different from other incorporated municipalities in Racine County, or for that matter, almost any area of Wisconsin. The following chart shows the area in square miles of all municipalities in Racine County. The Department notes that a consolidated Village of Rochester would have more territory than any other incorporated municipality in the County and more than 90% of the 190 cities in Wisconsin. Only 5 Wisconsin villages would have more square miles than a consolidated Village of Rochester.

Figure 25 Size of Racine County Municipalities



The following chart shows the only villages in Wisconsin that would be larger than the proposed consolidated Village of Rochester, the area and people per square mile for each, and the same information for two Racine County cities.

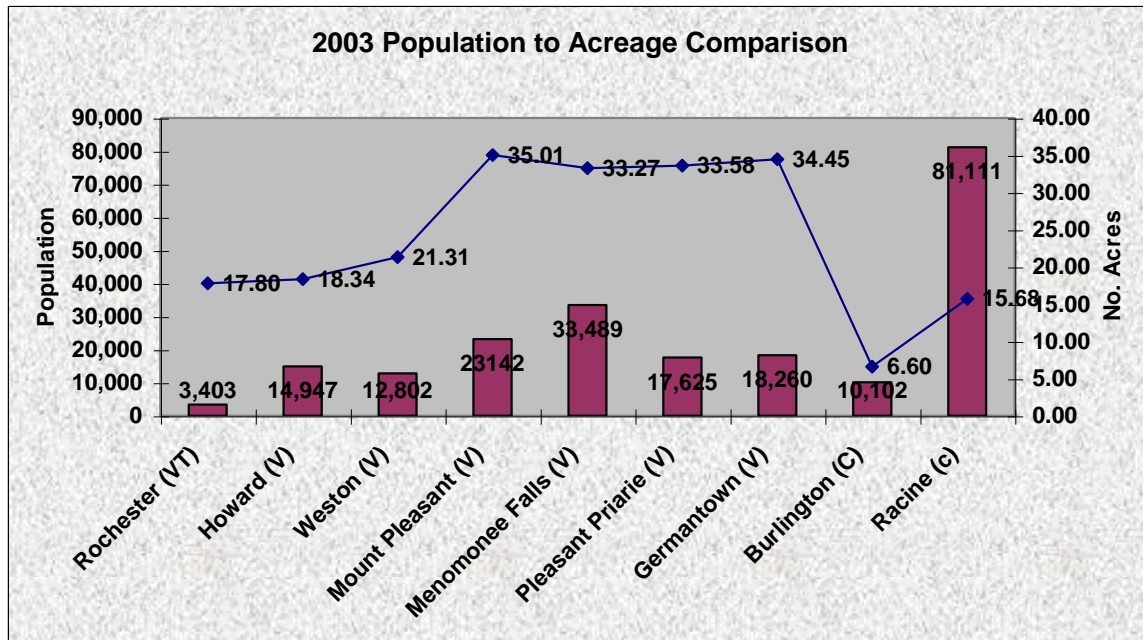
Figure 26 Villages Larger than the Proposed Village of Rochester



The figures atop of each column are number of acres in each municipality. Figures along the plotted line represent people per square mile. As can be observed, the Village with the lowest population density among these large area villages (Weston 601 people/sq. mile) has a population density 2.7 times greater than the proposed Village of Rochester (191 people/sq. mile). The population density in the most comparably sized city (Racine) in Racine County is 27 times greater.

Perhaps even more revealing of a combined Rochester entity is shown in the following chart that compares amount of acreage to 2003 population. The most comparable village (Howard) in terms of size has four times the population of the proposed Village of Rochester, and the nearest city (Burlington, has nearly 3 times the population in approximately 1/3 the area. These charts and data show that a consolidated Village of Rochester would be very different in size and population density than most Wisconsin municipalities.

Figure 27 Population to Acreage Comparison



Section 2(D) Determination

Petitioners assumed that they would be considered an “isolated Village” in their Consolidation report and subsequent information submitted to the Department,⁶⁵ making no mention about current issues of common interest or concern among the several adjoining area communities, and how the Town and Village of Rochester would seek to address them as a consolidated entity. The only information provided about contiguous incorporated communities include intergovernmental agreements for various services, which included only one with the City of Burlington for animal control. Intergovernmental agreements with the Village of Waterford include only those for sewer, animal control and health services.⁶⁶ While these agreements are important first steps, they arguably do not materially affect long term land use policy and development issues common to the several adjoining municipalities, nor do they describe or assure the continuation of any complementary land use visions following the extension of home-rule authority over the entire area following consolidation.⁶⁷

Acknowledging that local decisions affect metropolitan conditions, the Department must consider the impact the proposed consolidated entity of Rochester will have on contiguous communities. This proposed consolidation lies cross-wise between two rapidly growing municipalities, while bisecting two other presently unincorporated hamlets, and would present very different growth inhibiting/inducing incentives based on a minimal cost and service structure, and potential regulatory changes for the town portion that is presently under county jurisdiction. For all of the

⁶⁵ Memorandum from Attorney John E. Hotvedt to George Hall, page 3 received at DOA on February 13, 2004.

⁶⁶ Town and Village of Rochester Consolidation Report, page 81.

⁶⁷ This is one of the primary requirements of the new alternative statutory consolidation method, that comprehensive agreements with all neighboring jurisdictions be negotiated and agreed to before any consolidation may take effect.

SECTION 2(D) IMPACT UPON THE METROPOLITAN COMMUNITY

aforementioned reasons, the Department cannot make an express finding that the proposed consolidation will not hinder the resolution of metropolitan issues. Therefore, the metropolitan impact requirement is not met.

APPENDIX B: MAPS

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Map 3 POWTS Suitability

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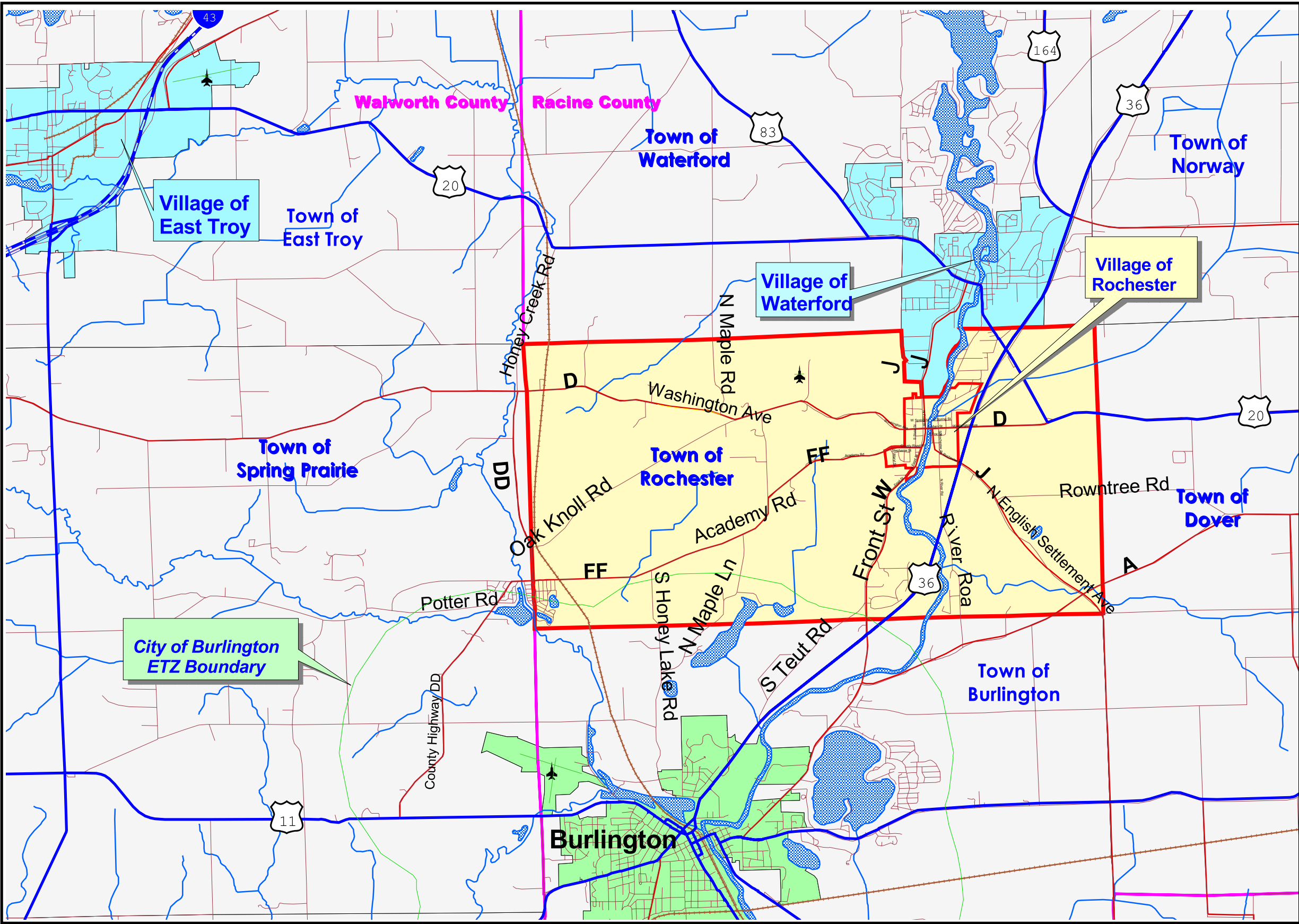
Map 5 Rochester Area Businesses

Map 6 Watersheds

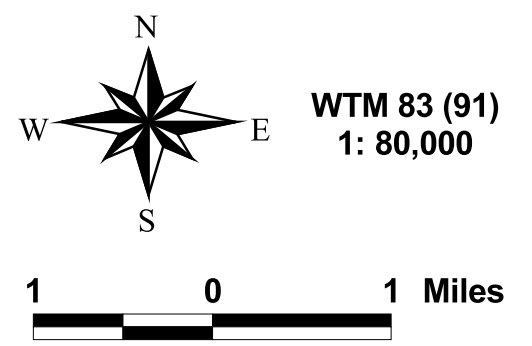
Map 7 Rochester Area Population Density

Map 8 Recommended Land Use Plan for the Town and Village of Rochester:
2020




Map 1 Rochester Consolidation Area

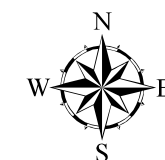
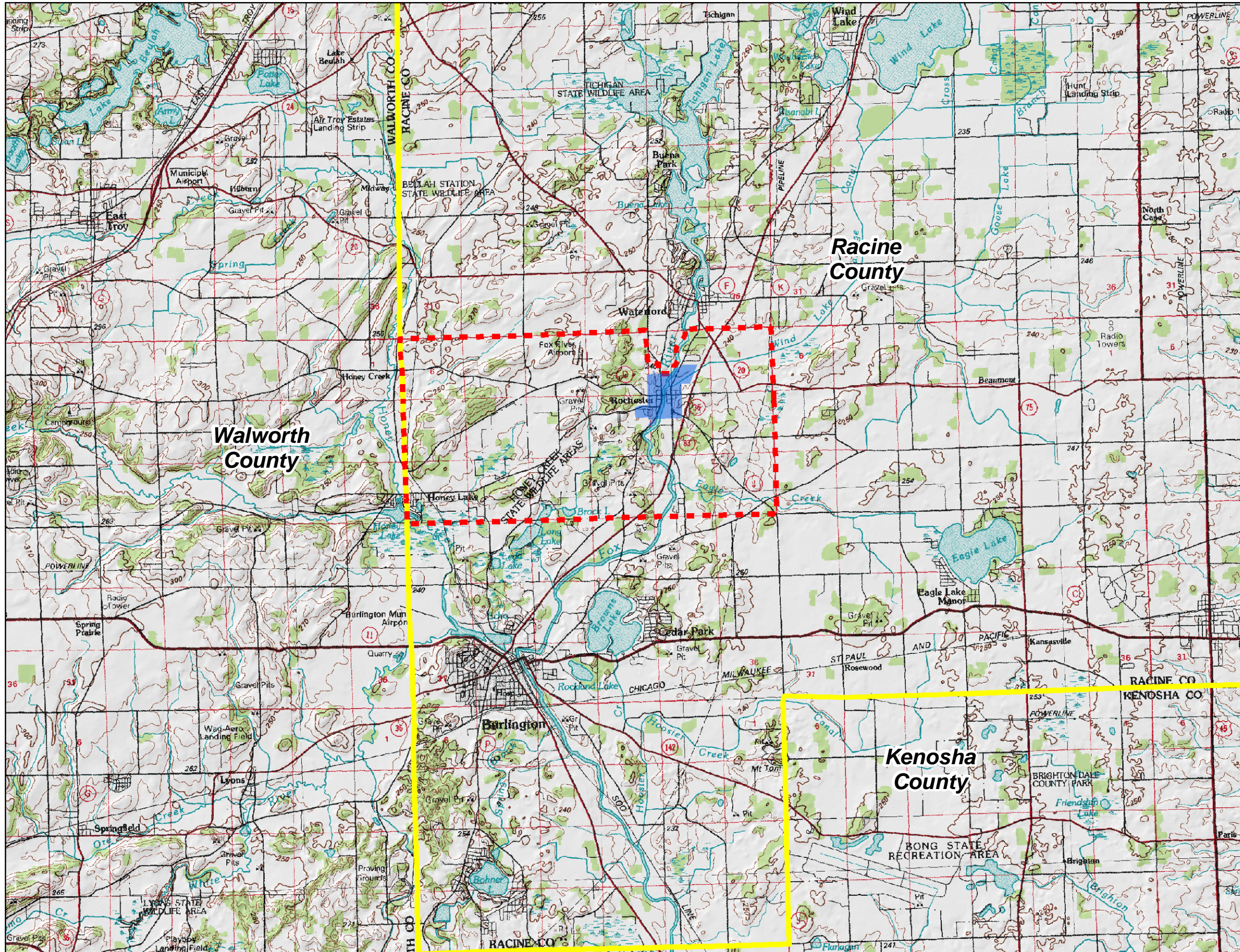


- Airport Runways
- WI Airports
- WI Highways**
- Interstate Highways
- US Highways
- State Trunk Highways
- Wisconsin Roads
- County Highways
- WDOT Railroads
- Rivers
- Lakes & Major Water Bodies
- Village of Rochester Boundary
- Proposed Consolidation Boundary
- WI Counties
- WI Municipalities**
- City
- Town
- Village

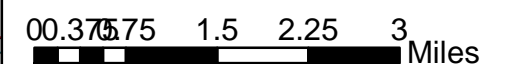


Map 2 Topography Map

-  Consolidation Boundary
-  County Boundaries
-  Village of Rochester

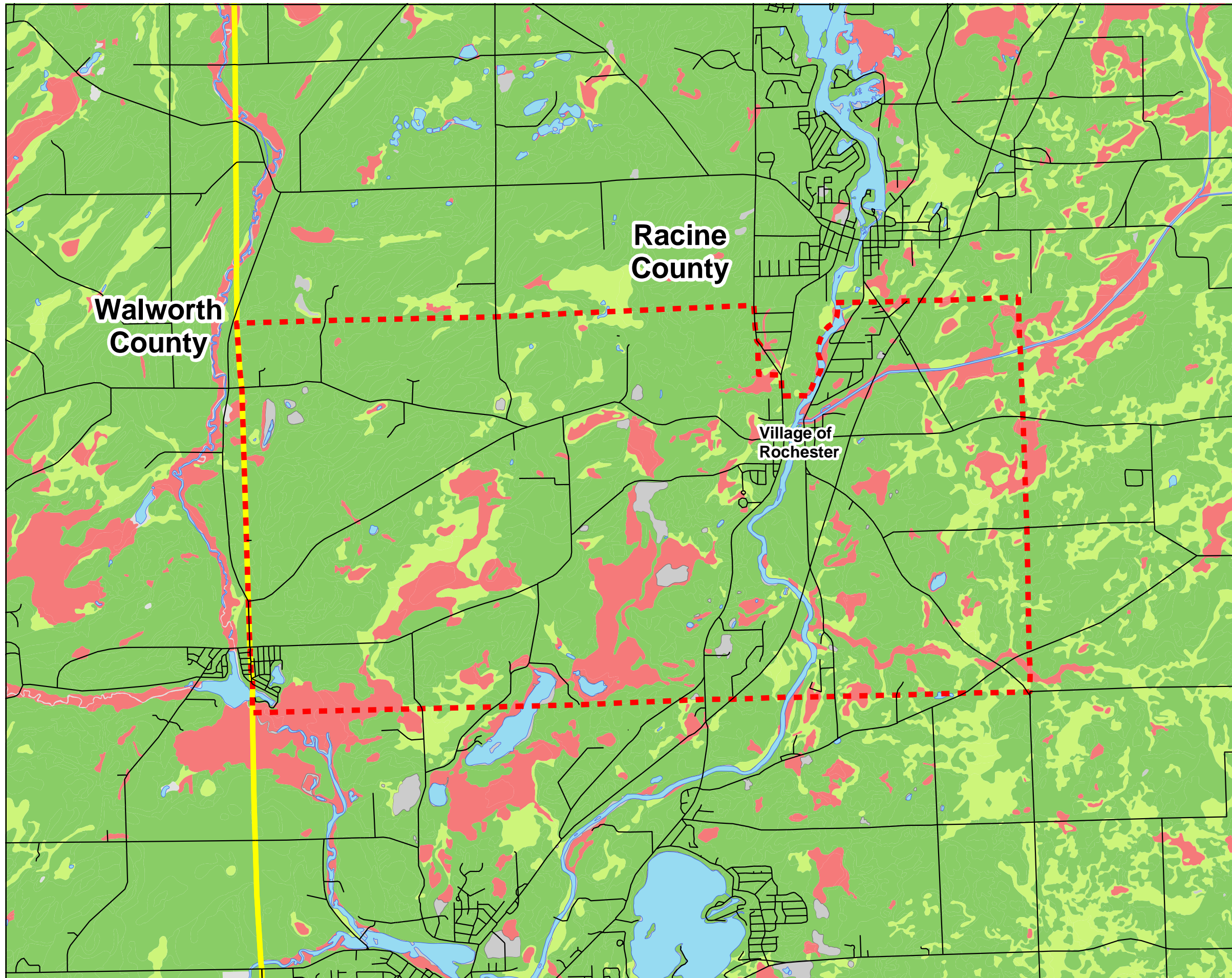


WTM 83 (91)
1 : 100,000



Map 3

POWTS Suitability Map



- Roads
- - - Consolidation Boundary
- ▭ County Boundaries
- ▭ Lakes
- POWTS Suitability**
 - ▭ High
 - ▭ Moderate
 - ▭ Low

Estimated probability that the map unit includes a suitable site for an alternate (engineered) POWTS system.

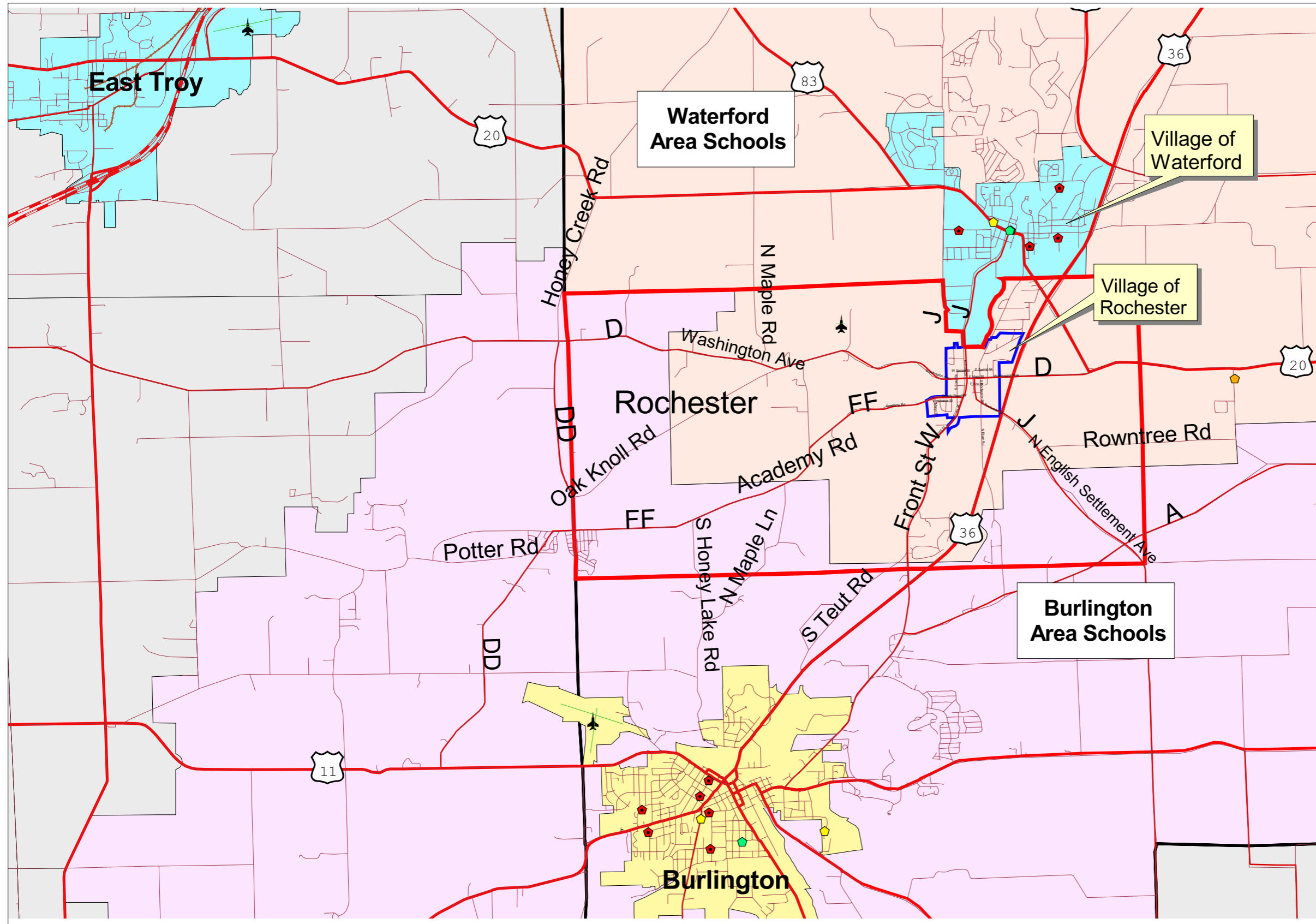
N
W E
S

WTM 83 (91)
1: 48,000

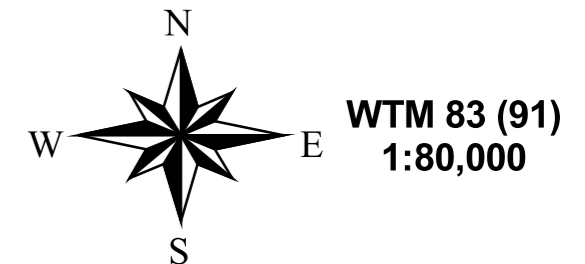
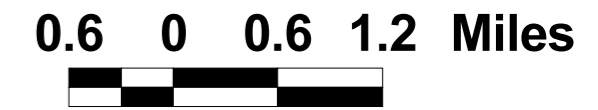
0 0.2 0.4 0.8 1.2 1.6 Miles



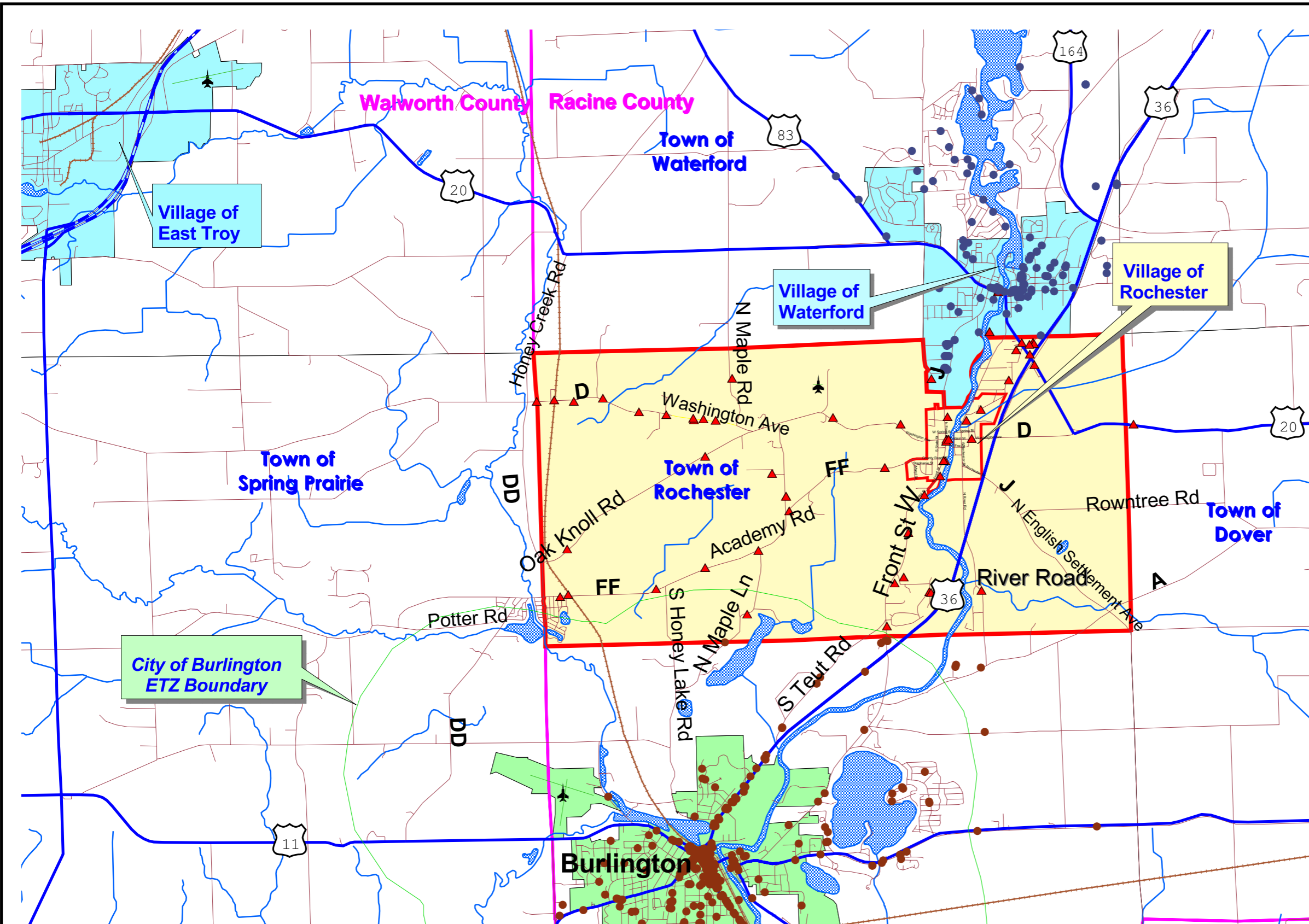
Map 4 Rochester Area School Districts



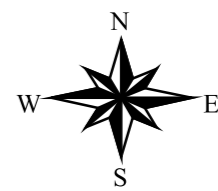
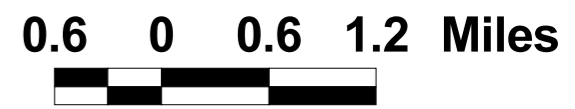
- Area Schools**
- ◆ Elementary School
 - ◆ High School
 - ◆ K-12 Combined School
 - ◆ Middle School
- WI Highways**
- ▬ Interstate Highways
 - ▬ US Highways
 - ▬ State Trunk Highways
- WI Counties**
- ▭ Proposed Consolidation Boundary
 - ▭ Village of Waterford
 - ▭ Village of Rochester Boundary
 - ▭ Burlington.shp
- School District Boundaries**
- ▭ Burlington Area Schools
 - ▭ Waterford Schools
 - ▭ WDOT Railroads
- WI Municipalities**
- ▭ C
 - ▭ T
 - ▭ V



Map 5 Rochester Area Businesses



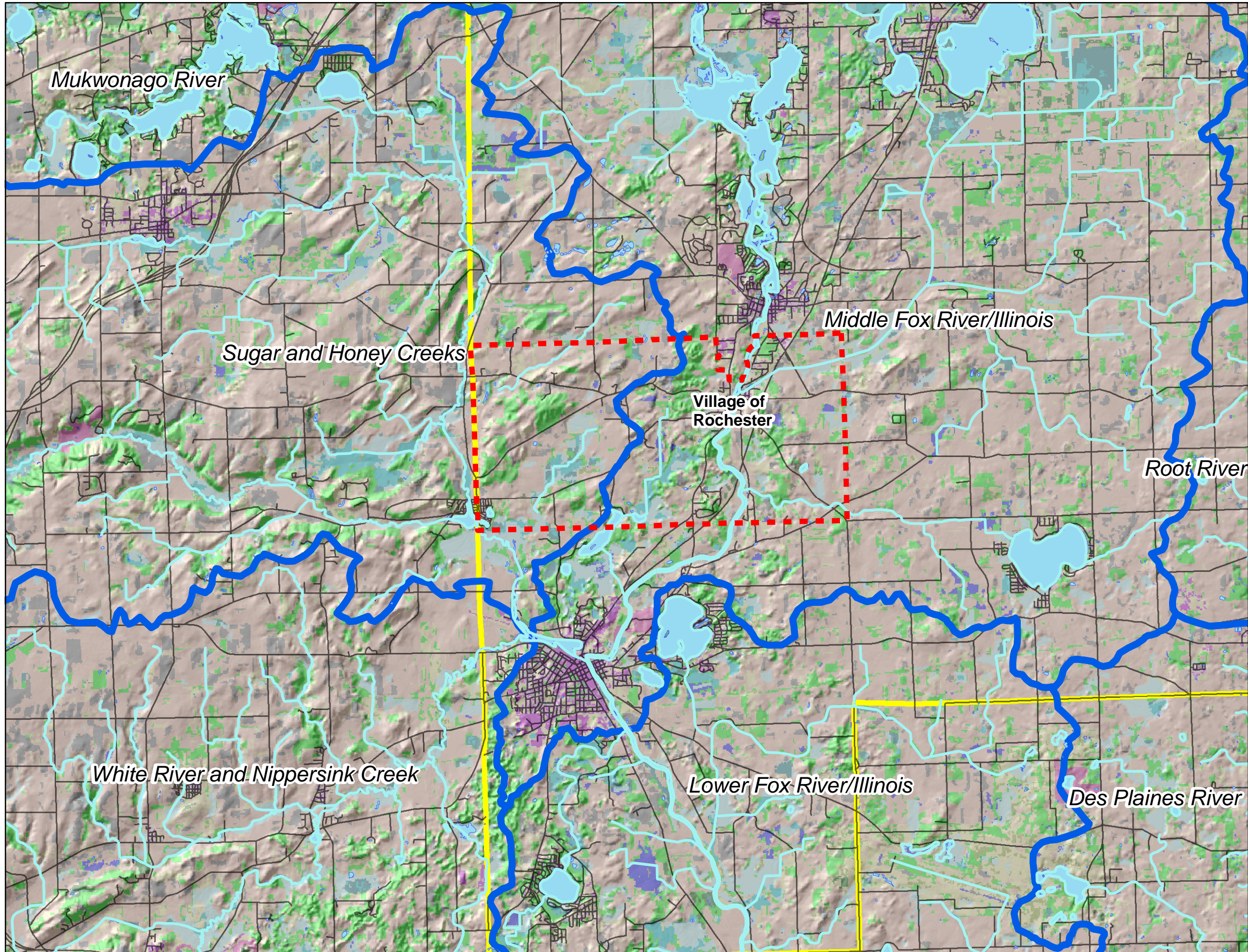
- Waterford Area Businesses
- Burlington Area Businesses
- ▲ Rochester Area Businesses
- ✈ Airport Runways
- ✈ WI Airports
- WI Highways
 - ▬ Interstate Highways
 - ▬ US Highways
 - ▬ State Trunk Highways
 - ▬ Wi Roads.shp
 - ▬ WDOT Railroads
 - ▬ Rivers
 - ▬ Lakes & Major Water Bodies
 - ▬ Village of Rochester Boundary
 - ▬ Proposed Consolidation Boundary
 - ▬ WI Counties
- WI Municipalities
 - C
 - T
 - V
- ▬ County Highways



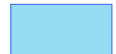





WTM 83 (91)
1: 80,000




Map 6 Watersheds



-  Consolidation Boundary
-  Roads
-  Lakes
-  County Boundaries
-  Rivers & Streams
-  Watershed Boundaries

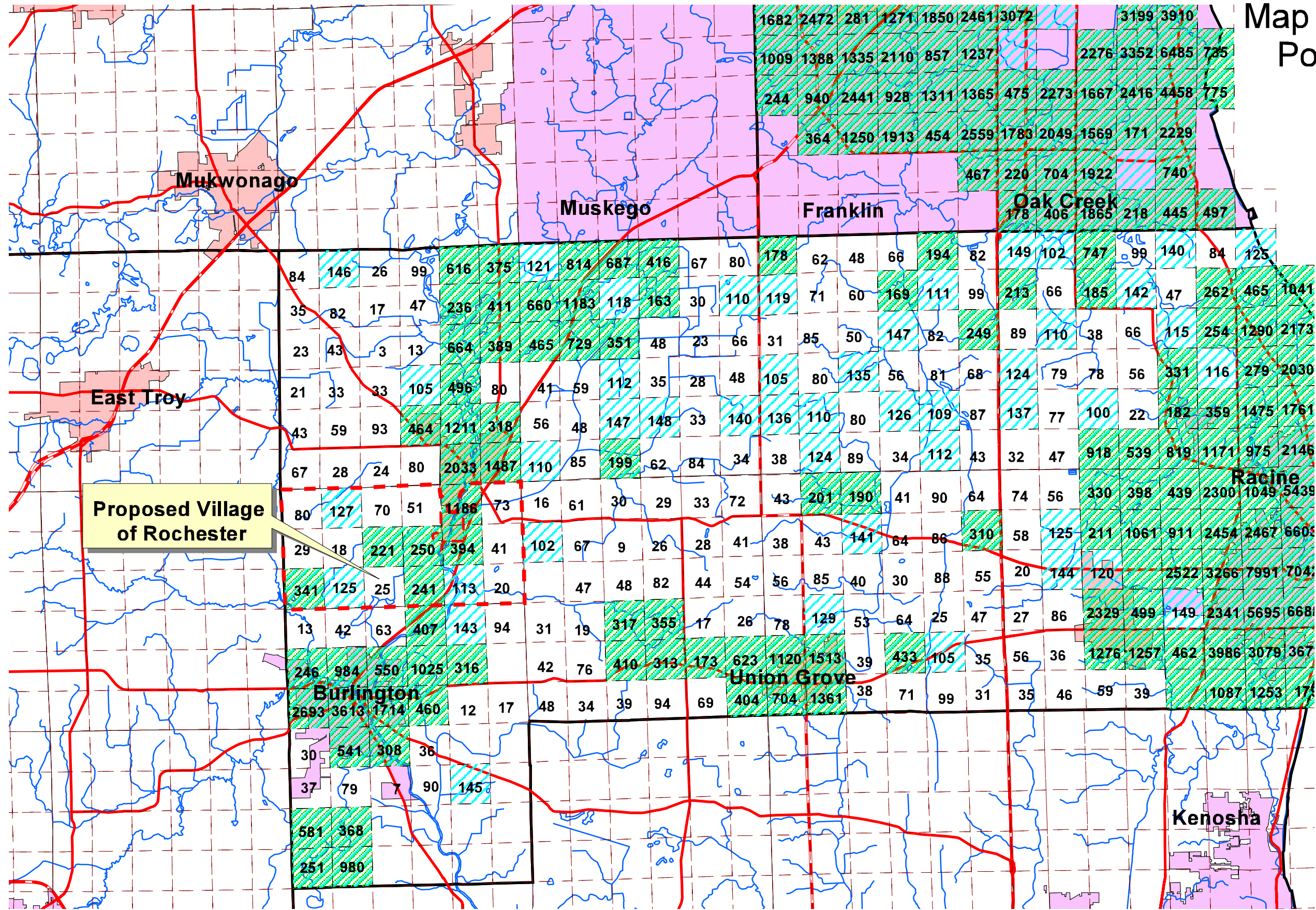
WTM 83 (91)
1 : 100,000



0 0.450.9 1.8 2.7 3.6 Miles

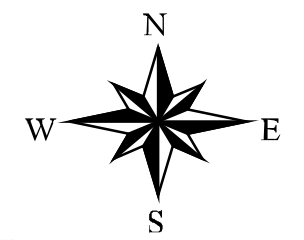


Map 7 Rochester Area Population Density

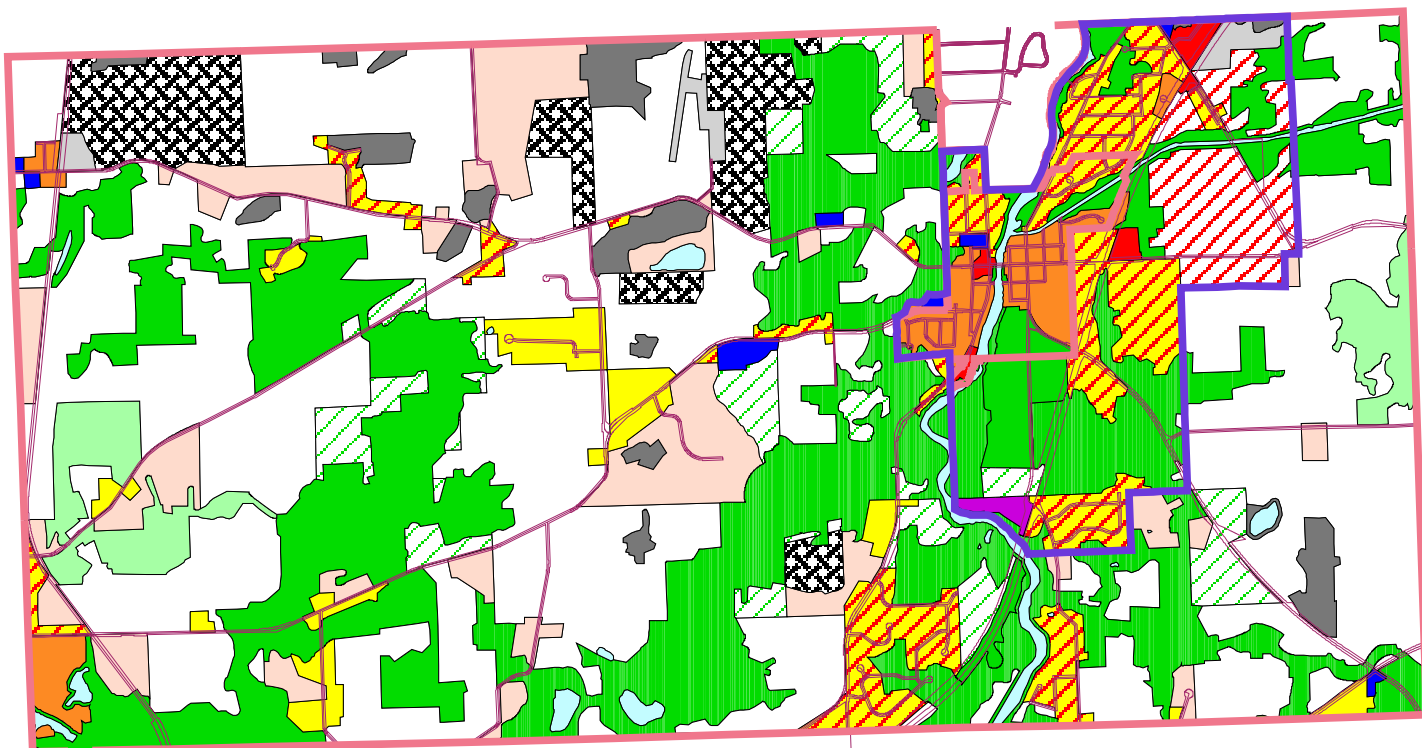


- Village of Rochester Boundary
- Proposed Consolidation Boundary
- Population >= 150 per Sq. Mile
- Population >= 100 per Sq. Mile
- PLSS Sections
- WI Highways**
 - Interstate Highways
 - US Highways
 - State Trunk Highways
- WI Counties
- Rivers
- WI Municipalities**
 - Ciity
 - Town
 - Village

Proposed Village of Rochester



Map 8 Recommended Land Use Plan for the Town and Village of Rochester: 2020



-  Planned Urban Service Area
-  Road Centerline
- Land Use**
-  Rural Density Residential
-  Suburban Density Residential
-  Low Density Residential
-  Medium Density Residential
-  Commercial
-  Industrial
-  Transportation, Communications, and Utilities
-  Government and Institutional
-  Recreational
-  Other Public Open Space
-  Agricultural
-  Extractive
-  Primary Environmental Corridor
-  Secondary Environmental Corridor
-  Isolated Natural Resource Area
-  Urban Reserve
-  Surface Water

