

Sud - 3-7-12 @ 3:15 PM
By - R. M. M. / A.M.S

NOTICE OF INJURY AND CIRCUMSTANCES OF CLAIM
PURSUANT TO WIS. STAT. § 893.80(1)(a)

TO: City of Menasha
Don Merkes, Mayor
City Hall
140 Main Street
Menasha, WI 54952-3151

City of Menasha
Debbie Galeazzi, City Clerk
City Hall
140 Main Street
Menasha, WI 54952-3151

Don Merkes, individually
City Hall
140 Main Street
Menasha, WI 54952-3151

Chris Klein
730 Keyes Street
Menasha, WI 54952

Michael Taylor
545 Broad Street
Menasha, WI 54952

Stan Sevenich
645 Ninth Street
Menasha, WI 54952

Mark Langdon
724 Warsaw Street
Menasha, WI 54952

Jim Englebert
1209 Greendale Street
Menasha, WI 54952

Kevin Benner
1190 Fieldview Drive
Menasha, WI 54952

THE ABOVE-NAMED PARTIES, PLEASE TAKE NOTICE: By Attorney Andrew J. Rossmeyssl, attorney of the Herrling Clark Law Firm Ltd., on behalf of the Claimants named below, the following Notice of Injury and Circumstances of Claim, is hereby provided, pursuant to Wis. Stats. § 893.80(1)(a).

CLAIMANTS. The name and address of the Claimants, with claims for damages or alternative relief set forth in this Notice or a subsequent Notice stating a Claim for Damages, are Celine Romenesko, N9598 County N, Appleton, WI 54915, and Rick Kindschi, W6058 Hearthstone Drive, Appleton, WI 54915 (Romenesko and Kindschi shall collectively be referred to herein as the "Petitioners") and the Town of Harrison, Calumet County, Wisconsin, with the principal location of business located at W5298 Hwy. 114, Menasha, WI 54952.

INJURY AND CIRCUMSTANCES. The above-named Claimants hereby set forth their injuries, and circumstances of their claim:

1. That, Celine Romenesko is an adult resident of the State of Wisconsin residing at N9598 County N, Appleton, WI 54915.

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CITY OF MENASHA
BY af

2. That, Rick Kindschi is an adult resident of the State of Wisconsin residing at W6058 Hearthstone Drive, Appleton, WI 54915.
3. That, Romenesko and Kindschi are representatives of the Petitioners in Calumet County Circuit Court Case No. 12-CV-28, regarding a Petition to Incorporate a portion of the Town of Harrison and the Town of Buchanan as the Village of Harrison.
4. That, Town of Harrison is a Wisconsin township and body politic with principal place of business located at W5298 Hwy. 114, Menasha, WI 54952, and is located 100% within Calumet County, Wisconsin.
5. That, the City of Menasha is a Wisconsin body corporate and politic, with principal offices located at 140 Main Street, Menasha, WI 54952-3151.
6. That, Don Merkes, is an adult resident of the State of Wisconsin.
7. That, Chris Klein, Michael Taylor, Stan Sevenich, Mark Langdon, Jim Englebert, and Kevin Benner are members of the Common Council of the City of Menasha who voted in favor of a certain resolution described herein; namely Resolution R-3-12
8. That, the City of Menasha and the Town of Harrison and third-party Waverly Sanitary District entered into an Intergovernmental Agreement, a copy of which is attached hereto as **Exhibit A** to this Notice, on or about October 28, 1999.
9. That, paragraph 5 of said Intergovernmental Agreement states, in pertinent part:

“The City shall not accept for annexation any property within the Town growth area without the approval of the Harrison Town Board. The parties agree that this paragraph may be used as the sole basis for a Court determination regarding the invalidity of any annexation by the City within the Town’s growth area. The City shall not exercise any extraterritorial zoning or extraterritorial plat review over any property within the Town’s growth area.”
10. That, paragraph 10 of said Intergovernmental Agreement states, in pertinent part:

“The City shall not contest any attempt by the Town to incorporate so long as all the territory of the incorporation effort is outside the City’s growth area. The Town agrees that it will stipulate that any incorporation filed contrary to this paragraph does not meet the criteria of sec. 66.016 Wis. Stats.”
11. That, paragraph 16.d. of said Intergovernmental Agreement states, in pertinent part:

"The Agreement imposes a duty of good faith and fair dealing on all parties."

12. That, paragraph 16.e. of said Intergovernmental Agreement states, in pertinent part:

"This Agreement is the complete agreement of the parties with respect to the matters covered by this Agreement. No agreements, promises, nor representations made by either party during the negotiations for or approval of this agreement shall be binding or effective unless included. The negotiating parties agree that each of them shall recommend this agreement to the City Council, the Town Board, and Waverly Sanitary Board for approval. The negotiating parties agree further that each of them shall support and promote this agreement to any other entity, public or private that is affected by, or needs to approve any issue necessary to carry out the intent of this agreement.
13. That, paragraph 16.i. of said Intergovernmental Agreement states, in pertinent part:

"This Agreement shall be liberally construed to accomplish its intent. The parties agree that each has been involved in the drafting of this Agreement so that no ambiguity shall be held against either party simply as drafter.
14. That, the terms of said Intergovernmental Agreement extends from October 28, 1999 through September 1, 2029.
15. That, the City of Menasha generally complied with the terms of said Intergovernmental Agreement from its inception until 2011.
16. That, upon information and belief, Mayor Don Merkes and/or members of the Common Council began discussions with officers, employees, and/or agents of the City of Kaukauna in late 2011 or early 2012, the subject of such discussions included taking action which would effectively breach the afore-referenced terms of the Intergovernmental Agreement.
17. That, upon information and belief, internal discussions involving Mayor Don Merkes, the Common Council, staff members and employees, and the City Attorney ensued whereby, those parties contemplated taking action which would breach the afore-referenced terms of said Intergovernmental Agreement.
18. That, on or about February 23, 2012, the City of Menasha posted an "Agenda Amended" attached hereto as **Exhibit B**, containing, in pertinent part, the following discussion/action items:

- Motion to Adjourn into Closed Session pursuant to Wis. Stats. §19.85(1)(g): Conferring with legal counsel for the governmental body who is rendering oral or written advise concerning strategy to be adopted by the body with respect to litigation in which it is or is likely to become involved. (Intermunicipal Agreement with Town of Harrison, Menasha and Waverly Sanitary District; Case #12-CV-28 In the Matter of Incorporation of portions of lands comprising the Town of Harrison, Calumet County and the Town of Buchanan, Outagamie County)
 - Reconvene into Open Session
 - Discussion of the Petition for the Incorporation of the Village of Harrison and possible action.
 - Resolution indicating a willingness to annex the territory designated in the Incorporation Petition (Town of Harrison)
19. That, personnel appeared on behalf of the Town of Harrison and the Petitioners at a public comment session prior to a Special Common Council meeting scheduled for February 24, 2012, the purpose of said appearance was to object to any resolution indicating a willingness to annex territory purposed for incorporation within the Town of Harrison on the basis that any such resolution would violate key terms of the Intergovernmental Agreement referenced herein.
 20. That, members of the Common Council, staff, Mayor Don Merkes, and the City of Menasha City Attorney met in closed session.
 21. That, following said closed session, the Common Council reconvened in open session and adopted Resolution R-3-12, attached hereto as **Exhibit C**.
 22. That, the purpose and effect of said resolution was to either 1) initiate proceedings to annex territory contrary to paragraph 5 of the Intergovernmental Agreement, or 2) to interfere with a Town-sponsored Petition for Incorporation, currently pending in Calumet County Circuit Court Case No. 12-CV-28, contrary to key terms of the Intergovernmental Agreement referenced herein.
 23. That, in either case, the City of Menasha, Don Merkes, Chris Klein, Michael Taylor, Stan Sevenich, Mark Langdon, Jim Englebert, and Kevin Benner have taken steps to breach the Intergovernmental Agreement, causing the Petitioners and the Town of Harrison present and future damages, to be specified in a future Notice of Claim.
 24. That, the full extent of said damages cannot be ascertained at this time, but said damages will include, and not be limited to, actual attorneys' fees expended in contesting said breach and in addressing complications that arised as a result of said breach in Calumet County Circuit Court Case No. 12-CV-28, actual damages stemming from complications that have or will arise in Calumet County Circuit Court Case No. 12-CV-28, potential lost revenue as a result of said proposed

annexation of territory outside of the Town Growth Area as referenced in the Intergovernmental Agreement, and other actual damages.

25. That, the City of Menasha, Don Merkes, Chris Klein, Michael Taylor, Stan Sevenich, Mark Langdon, Jim Englebert, and Kevin Benner, knew or should have known that their actions would breach key terms of the Intergovernmental Agreement and cause the Petitioners and the Town of Harrison irrevocable damage; accordingly, said breach and said damages were knowingly caused by the City of Menasha, Mayor Don Merkes, and the Common Council.
26. That, accordingly, the Claimants are also entitled to punitive damages.
27. That, although Don Merkes neither voted to adopt nor voted to reject Resolution R-3-12, upon information and belief Don Merkes encouraged the Common Council to vote for Resolution R-3-12, in violation of the Intergovernmental Agreement, for his own benefit and for the perceived benefit of the City of Menasha, and thus Don Merkes intentionally interfered with the contractual relations between the City of Menasha and the Town of Harrison and the Petitioners.

Dated this 6th day of March, 2012.

HERRLING CLARK LAW FIRM LTD.,
Attorneys for Claimants

By: 
Andrew J. Rossmeissl, Attorney

ADDRESS:
800 N. Lynndale Drive
Appleton, WI 54914
(920) 882-3219

INTERMUNICIPAL AGREEMENT

1. Preamble

The Town of Harrison (Town), the City of Menasha (City), and the Waverly Sanitary District (Waverly) pursuant to ss. 66.027, 66.30 and 66.028 Wis. Stats., desire to enter into an Intermunicipal Agreement in order to:

- A. Establish fixed boundaries;
- B. Facilitate orderly development of the Town and the City;
- C. Eliminate current and minimize future litigation;
- D. Provide for cost effective governmental services to citizens of the Town and City;
- E. Maximize capacity of current infrastructure for sewer and water service;
- F. Promote harmony between the municipalities.

The Town and the City desire to enter into an agreement pursuant to s. 66.023 Wis. Stats. to formalize boundaries between the municipalities. This agreement is intended to be an interim agreement until such time as the s. 66.023 agreement is enacted.

2. Boundaries

The eastern boundary line shall be fixed to run from the intersection of Manitowoc and Lake Park Road southerly to the intersection of Lake Park Road and STH114 - US10. The southern boundary line shall run from the intersection of Lake Park Road and STH114 - US10 westerly to the intersection of Oneida Street and STH114 - US10. The western boundary line shall run along Oneida Street from the intersection of Oneida Street and STH114 - US10 to the intersection of Midway Road and Oneida Street. The northern boundary shall run from the intersection of Midway Road and Oneida Street easterly along Midway Road to Kernan Avenue, then south along Kernan Avenue to Manitowoc Road, then easterly along Manitowoc Road to Lake Park Road.

The Town territory within the boundary described shall be designated as an area within which the City may annex without Town objection. This area shall be designated the City growth area.

The territory east of Lake Park Road shall be designated the Town growth area. The City shall not accept any petition for annexation for any territory east of Lake Park Road.

A map will be prepared as Exhibit "A" and incorporated into this Agreement.

EXHIBIT A.

3. Residents Within the City Growth Area

Property owned by a Town resident who also resides on such property within the City growth area may be included in an annexation petition accepted by the City except as is limited below. The City agrees that it will not include in any annexation petition any part of property which was actively being farmed as of April 1, 1999 (except for property owned by Gordon Van De Hey which is being purchased by the City) unless such property owner resident signs the petition for annexation. It is understood that any and all property owned by a resident active farmer as of April 1, 1999 shall not be included in any annexation petition. These are the farms owned and operated by Jeffrey Wisnet, James Bodway, and John Bartlein. Should any of these farms no longer be actively farmed by the resident owner, the City may include any of that land in any annexation petition. For purposes of this paragraph, a property is not actively farmed if no crops are harvested for two consecutive growing seasons on the tillable land, or the property owner has certified to the City and the Town a valid agricultural reason for the land to remain unplanted for longer than two consecutive growing seasons. The City may also include in an annexation petition land at the intersection of Oneida Street and US10 - STH114 currently being developed as a gas station. The City will honor any permits or plats which have been issued or approved prior to April 1, 1999.

The Town will not contest nor finance any objection to any annexation petition filed consistent with this agreement. No property owner is obligated to sign an annexation petition unless that land is being developed.

The City may annex without objection from the Town, any occupied property within the City growth area, except occupied property as of April 1, 1999 in what is known as the Stacker plat, the Green Acres Pond plat (Ribble), the Cottonwood Creek plat, and the Cottonwood Creek II plat, the Hoffman Estates plat and the farms referred to above. No such annexation may occur except at such time as the current owner sells the property to other than an immediate family member. For purposes of this agreement, immediate family means husband, wife, son, daughter, stepson or stepdaughter. The City may annex any property within the City growth area whose owner signs a petition for annexation.

Any resident owner may replace or remodel his/her existing residence pursuant to Town regulations. No new additional residences may be constructed without the consent of the City.

With respect to the Stacker plat, Hoffman Estates plat, Cottonwood Creek plat, and the Cottonwood Creek II plat, the City shall not accept any annexation petitions unless they are unanimous consent annexation petitions.

Attached as Exhibit "B" and made part of this agreement by reference is the perimeter boundaries and/or descriptions of the Stacker plat, Hoffman Estates plat, Cottonwood Creek plat, Cottonwood Creek II plat and the Green Acres Pond Plat.

4. **Unimproved Property Within the City Growth Area**

To the extent allowed by law, the Town will not allow the development of any land within the City growth area except single and two family dwellings may be constructed on lots of record as of April 1, 1999. Development shall include the issuance of any building permit, rezoning consideration, vacation request or any other action requiring the approval of the Town of Harrison Planning Commission or Town Board. The Town shall notify the City of applications to construct or develop single family or two-family homes on lots of record as of April 1, 1999.

The Waverly Sanitary District shall not allow any connections to sanitary sewer or water service within the City growth area except for single and two family development on lots of record as of April 1, 1999. Should any property owner wish to develop or build in any manner which is not consistent with this provision, the Town shall advise that that property owner should file a petition with the City to annex the property.

The City agrees to indemnify and hold the Town and Waverly Sanitary District harmless in the event a Court of record imposes damages as a result of the obligations imposed by this section 4.

5. **Town Growth Area**

The City shall not accept for annexation any property within the Town growth area without the approval of the Harrison Town Board. The parties agree that this paragraph may be used as the sole basis for a Court determination regarding the invalidity of any annexation by the City within the Town's growth area. The City shall not exercise any extraterritorial zoning or extraterritorial plat review over any property within the Town's growth area.

6. **Sanitary Sewer Planning Area**

All development in the Sanitary Sewer Planning Area as established by East Central Regional Planning Commission shall require hook-up to public sanitary sewer systems connected to the Neenah-Menasha Sewerage System. No on-site waste disposal systems shall be allowed or approved, except as replacements for existing on-site waste disposal systems which have been designated as a failing system by the Calumet County Sanitarian. The Town and the City shall cooperate to expand the Sanitary Sewer Service Area so as to accommodate the intent of this Agreement. Such cooperation shall include a direct request for an initial expansion of the Sewer Service Area so as to provide an opportunity for immediate growth as well as a change in policy which would allow for automatic expansion of the sewer service area upon achieving a predetermined level of growth in the Sewer Service Area.

Neither the Town nor the Waverly Sanitary District may petition East Central Regional Planning Commission to include within the Sanitary Sewer Service Area any property within the City growth area without annexation to the City or the consent of the City.

Neither the Town nor Waverly Sanitary District may extend the Waverly Sanitary District within the City growth area.

A Memorandum of Understanding relating to expansion of the Neenah/Menasha Sewer Service Area and extension of sewer and water facilities is attached as Exhibit "C" and made part of this agreement by reference.

7. **Engineering Study of Sanitary Sewer System**

An engineering study has been prepared by Omni Engineering which establishes a plan for the installation of sanitary sewer service to areas within the City and Town growth areas. The City and the Town agree that option A, attached as Exhibit A, will be the basis for this service expansion with the parties sharing in the actual costs of construction according to the percentages of territory to be served by this expansion. The parties further agree that this expansion will take place during the 2000 construction season and that arrangements will be made in the respective budgets of the Town and the City to pay for this expansion. Upon completion of the system, the system will be turned over to the Waverly Sanitary District for operation.

The Waverly Sanitary District shall be responsible to bid the project design and construction. Upon receiving invoices, the City and Town will pay such invoices to Waverly based upon monthly-billed documentation. The share of the total project will be as determined by the Omni study. The City and Town shall have the right to review bidding documents and contract document before award and construction.

8. **Large Sewer Users**

The Town or the City shall provide notice to the other when considering for approval any plans, building permit requests, CSM's or plats filed for any large user of the sewer system. A large user will be any user whose discharge is greater than 5000 gallons/day. Any capacity used by a large user shall be allocated to the capacity of the municipality in which the user is located.

9. **Waverly Sanitary District**

The Town and the City agree that any infrastructure necessary for water or sanitary service shall be installed at the expense of the benefiting municipality and shall then be turned over to the Waverly Sanitary District for operation and maintenance. Neither the Town nor the City shall make any attempt to dissolve and take over the Waverly Sanitary District without the consent of the Waverly Sanitary District and each other. Any

extensions to the sanitary or water service system shall follow Waverly Sanitary District procedures.

If necessary due to capacity issues with the current force main/gravity sewer connections to Sanitary District No. 4, the City of Menasha agrees to allow a future forced main connection from joint lift station to its 15" sanitary sewer in STH 114 west of Melissa street provided adequate capacity exists in such sewer. Waverly Sanitary District must exercise its current option to use excess capacity pursuant to its agreement with Sanitary District No. 4.

The Town shall obtain the consent of the Waverly Sanitary District to this Agreement.

10. **Town Incorporation**

The City shall not contest any attempt by the Town to incorporate so long as all the territory of the incorporation effort is outside the City's growth area. The Town agrees that it will stipulate that any incorporation filed contrary to this paragraph does not meet the criteria of sec. 66.016 Wis. Stats.

11. **Joint Planning**

The parties agree to work in good faith on issues of joint planning. In addition, the parties shall, in the future, work together to provide the necessary public services to the residents of both municipalities. A joint planning committee comprised of three City members and three Town members shall be established to make recommendations to the City's Planning Commission and Common Council and to the Town Board on issues of joint planning. Any disputes will be settled by mediation by an agreed upon third party.

12. **Curtin Annexation**

Upon execution of this agreement, the Town will dismiss its claims in the lawsuit challenging the Curtin annexation, Town of Harrison and Carlton A. Wieckert v. City of Menasha, 97 CV 100. The Town shall also not finance any continuation of this lawsuit by Carlton A. Wieckert or any other third party.

13. **Amendments**

This agreement may be amended from time to time by mutual agreement. No amendments shall be valid until such time as the amendments are authorized by the governing bodies of the City of Menasha and the Town of Harrison and executed in writing. The Town and the City agree that each shall entertain any requests for amendments by the other and make a decision as to the amendment within 90 days of the receipt of the notice of the request for the amendment.

14. Notices

All notices required by this agreement must be served personally, or by certified mail upon the respective municipal clerks. All petitions for annexation shall be forwarded from the party receiving it to the other party as soon as possible.

16. Miscellaneous

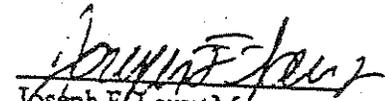
- a. It is contemplated that the municipalities will rely on ss. 66.30, 66.027 and 66.028 Wis. Stats., as statutory authority for this Boundary Agreement. The agreement shall be binding upon future Town Boards and City Councils and shall remain in effect until the enactment of a s. 66.023 Wis. Stats. agreement. Should such s. 66.023 agreement not be enacted, this agreement shall be extended until September 1, 2029. This Agreement may be extended by the approval of the City Common Council and the Town Board at any time. It is the intent of the parties that no statutory amendments, changes in the forms of government of the Town or the City nor changes in the elected officials shall affect the enforceability of the agreement.
- b. This Agreement is intended to be solely between the Town, the City and the Waverly Sanitary District. Nothing in this Agreement accords any third party any legal or equitable right, whatsoever which may be enforced by any non-party to this Agreement. Waverly Sanitary District shall approve of this agreement.
- c. If any portion of this Agreement is deemed to be invalid or unconstitutional, it shall not invalidate the balance of the Agreement not affected by that determination.
- d. The Agreement imposes a duty of good faith and fair dealing on all parties.
- e. This Agreement is the complete agreement of the parties with respect to the matters covered by this Agreement. No agreements, promises, nor representations made by either party during the negotiations for or approval of this agreement shall be binding or effective unless included. The negotiating parties agree that each of them shall recommend this agreement to the City Council, the Town Board, and Waverly Sanitary Board for approval. The negotiating parties agree further that each of them shall support and promote this agreement to any other entity, public or private that is affected by, or needs to approve any issue necessary to carry out the intent of this agreement.
- f. Either party without objection in any action to enforce the terms of this Agreement may enter this Agreement into evidence.
- g. The failure of any party to require strict compliance with any provision of this Agreement shall not constitute a waiver of the provisions of the Agreement nor any of the parties' rights under this Agreement. Rights and obligations under this agreement may only be waived or modified in writing signed by the party waiving that right or

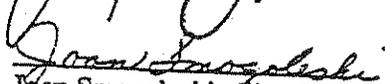
obligation. Waiver or modification of one term will not constitute a waiver of any other term.

- h. The City will construct its share of Carpenter Street during the 1999 construction season unless cost prohibitive. In that event, it will be constructed during the 2000 construction season.
- i. This Agreement shall be liberally construed to accomplish its intent. The parties agree that each has been involved in the drafting of this Agreement so that no ambiguity shall be held against either party simply as drafter.
- j. The parties agree that any unresolved dispute will be submitted to a mediator prior to either party instituting any legal action concerning this agreement.

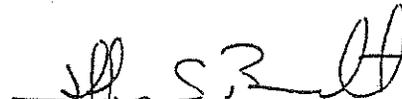
Dated this 28th day of Oct, 1999.

CITY OF MENASHA:


Joseph F. Lantz, Mayor

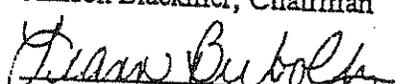

Joan Smogoleski, City Clerk

Approved as to form:


Jeffrey S. Brandt

TOWN OF HARRISON:

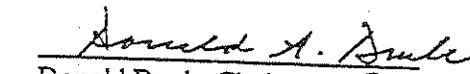

Allison Blackmer, Chairman

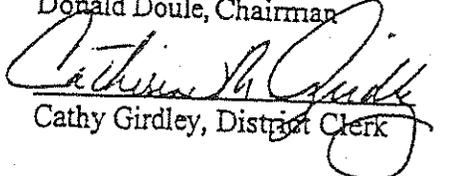

Leann Buboltz, Adm. Coord.
Deputy Clerk

Approved as to form:


~~John D. Skypool~~

WAVERLY SANITARY DISTRICT:


Donald Doule, Chairman


Cathy Girdley, District Clerk

Approved as to form:

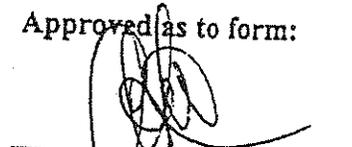

Charles J. Hartzheim

EXHIBIT B

Stacker Plat

SW ¼, NE ¼, Section 7, T20N, R18E, Town of Harrison

Green Acres Pond plat

Part of the West ½ of the NW ¼, Section 8, T20N, R18E, Town of Harrison,
Calumet County, Wisconsin

Hoffman Estates

Lot 2 of Certified Survey Map 1728 being Part of Lot 5 of Block 2 of Stacker Plat,
located in the Southwest ¼ of the Northeast ¼ of Section 7, Township 20 North,
Range 18 East, Town of Harrison, Calumet County, WI

Cottonwood Creek

All of C.S.M. 1624 and part of the Southwest ¼ of the Northwest ¼ of Section 8,
Township 20 North, Range 18 East, Town of Harrison, Calumet County,
Wisconsin

Cottonwood Creek II

Part of the Southwest ¼ of the Northwest ¼ of Section 8, Township 20 North,
Range 18 East, Town of Harrison, Calumet County, Wisconsin

EXHIBIT "C"
Memorandum of Understanding

This memorandum is entered into between the City of Menasha, Town of Harrison, Waverly Sanitary District and the East Central Wisconsin Regional Planning Commission's Regional Development Committee (RDC). This agreement is subject to the approval of the Wisconsin Department of Natural Resources on the the original swap amendment.

WHEREAS the City of Menasha, Town of Harrison, and Waverly Sanitary District have cooperated in the design of major sanitary sewer system improvements to service development in the vicinity of Lake Park Road and STH 10/114, and;

WHEREAS major investments will be required to extend the backbone sanitary sewer system to service the projected growth areas and;

WHEREAS the East Central Wisconsin Regional Planning Commission is the designated sewer service area planning agency for the subject area, and;

WHEREAS the Regional Development Committee takes actions and makes advisory recommendations to the WDNR on sewer service area amendments, and;

WHEREAS the amount of developable acreage currently within this portion of the Neenah/Menasha Sewer Service Area boundary would not be capable of supporting the costs of the necessary system improvements;

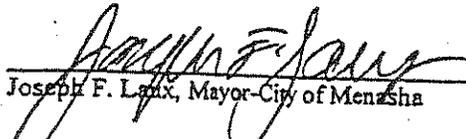
NOW, THEREFORE BE IT RESOLVED that the East Central Wisconsin Regional Planning Commission's Regional Development Committee will support and recommend to the WDNR approval of a future request from the Waverly Sanitary District to add an additional 105.8 total acres of land, of which 91.2 acres are vacant, to the Neenah/Menasha Sewer Service Area, shown as Area #4 per the attached map;

BE IT FURTHER RESOLVED that the addition of Area #4 acres will be subject to Area #2 being developed to a point which meets or exceeds 50% of its total land area.

BE IT FURTHER RESOLVED that the addition of Area #4 will still be subject to WDNR review and certification once advisory recommendations are acted upon by the Regional Development Committee.

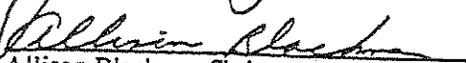
BE IT FURTHER RESOLVED that this agreement will expire on January 1, 2002 or once the East Central Wisconsin Regional Planning Commission initiates a 5-year update of the Neenah/Menasha Sewer Service Area Plan.

BE IT FURTHER RESOLVED that the City of Menasha and the Town of Harrison will support such an amendment;



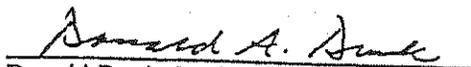
Joseph F. Lutz, Mayor - City of Menasha

Date: 10-28-99



Allison Blackmer, Chairperson - Town of Harrison

Date: 10-28-99



Donald Doule, President - Waverly Sanitary District

Date: 10-28-99

Donald DeGroot, Chair - ECWRPC Regional Development Committee

Date: _____

Harlan Kiesow, Director - East Central Wisconsin RPC

Date: _____

It is expected that a Quorum of the Personnel Committee, Board of Public Works, and Administration Committee will be attending this meeting: (although it is not expected that any official action of any of those bodies will be taken)

**CITY OF MENASHA
Special Common Council
Third Floor Council Chambers
140 Main Street, Menasha
February 24, 2012
4:00 PM
AGENDA
AMENDED**

- A. CALL TO ORDER
- B. PLEDGE OF ALLEGIANCE
- C. ROLL CALL/EXCUSED ABSENCES
- D. PUBLIC COMMENTS ON ANY MATTER LISTED ON THE AGENDA
(five (5) minutes time limit for each person)
- E. DISCUSSION/ACTION ITEMS
 1. Motion to Adjourn into Closed Session pursuant to Wis. Stats. §19.85(1)(g):
Conferring with legal counsel for the governmental body who is rendering oral or written advise concerning strategy to be adopted by the body with respect to litigation in which it is or is likely to become involved. (Intermunicipal Agreement with Town of Harrison, Menasha and Waverly Sanitary District; Case #12-CV-28 In the Matter of Incorporation of portions of lands comprising the Town of Harrison, Calumet County and the Town of Buchanan, Outagamie County)
 2. Reconvene into Open Session
 3. Discussion of the Petition for the Incorporation of the Village of Harrison and possible action
 4. Resolution indicating a willingness to annex the territory designated in the Incorporation Petition (Town of Harrison)
- G. ADJOURNMENT

"Menasha is committed to its diverse population. Our Non-English speaking population and those with disabilities are invited to contact the Menasha City Clerk at 967-3603 24-hours in advance of the meeting for the City to arrange special accommodations."

EXHIBIT B

Resolution R-3-12

A Resolution Relating to the Annexation of Territory
Proposed for Incorporation as the Village of Harrison

WHEREAS: A Petition for Incorporation of a portion of the Town of Harrison, Calumet County, and the Town of Buchanan, Outagamie County as the Village of Harrison has been filed with the Circuit Court of Calumet County, and;

WHEREAS: Such territory is described in Attachment A, and;

WHEREAS: Portions of such territory are coterminous with the City of Menasha, and;

WHEREAS: The City of Menasha finds the incorporation of this territory to be contrary to the interests of the city and the metropolitan area as it will result in the duplication of municipal facilities and services, and;

WHEREAS: The City of Menasha has the capacity to serve the area proposed for incorporation as the Village of Harrison.

NOW THEREFORE BE IT RESOLVED: That the City of Menasha hereby declares its willingness to annex the territory described in the incorporation petition, and;

BE IT FURTHER RESOLVED: That this resolution be filed at or prior to the hearing on the incorporation petition, or any adjournment for this purpose granted by the court.

Passed and approved this day of , 2012.

Donald Merkes, Mayor

Deborah A. Galeazzi, City Clerk

EXHIBIT C

ATTACHMENT

A

LEGAL DESCRIPTION

All of Section 2 and Part of Sections 1, 3, 9, 10, 15 & 16, Township 20 North, Range 18 East, Town of Harrison, Calumet County, and Part of Sections 32, 33, 34 & 35, Township 21 North, Range 18 East, Town of Buchanan, Outagamie County, Wisconsin and described as follows:

Beginning at the Intersection of the North line of the Northeast 1/4 said Section 1 and the Northerly extension of the East right-of-way line of Prosperity Drive; Thence S00°06'12"E, 1,430.04 feet along the extended East right-of-way line of Prosperity Drive; Thence S14°24'54"W, 159.56 feet; Thence S00°06'12"E, 1198.88 feet along the extended East right-of-way line of Prosperity Drive to the South line of Northeast 1/4 of said Section 1; Thence N89°36'44"W, 40.00 feet along the South line of Northeast 1/4 of said Section 1 to the Center 1/4 corner of said Section 1; Thence N89°47'05"W, 2,610.34 feet along the South line of the Northwest 1/4 of said Section 1 to the West 1/4 corner of said Section 1; Thence S00°21'02"W, 2,619.04 feet along the West line of the Southwest 1/4 of said Section 1 to the Southwest corner of said Section 1; Thence N88°21'50"W, 2,621.64 feet along the South line of the Southeast 1/4 of said Section 2 to the South 1/4 corner of said Section 2; Thence S89°16'59"W, 2,598.23 feet along the South line of the Southwest 1/4 of said Section 2 to the Southwest corner of said Section 2; Thence S00°00'43"E, 2,629.36 feet along the West line of the Northeast 1/4 of said Section 10 to the East 1/4 corner of said Section 10; Thence S00°38'14"W, 2,624.20 feet along the West line of the Southeast 1/4 of said Section 10 to the Southeast corner of said Section 10; Thence S00°48'35"W, 455.07 feet along the East line of the Northeast 1/4 of said Section 15 to the Centerline of U.S. Highway 10; Thence 3,460.26 feet along the centerline of said U.S. Highway 10 to the Center 1/4 corner of Section 15; Thence N89°11'31"W, 2,624.13 feet along the South line of the Northwest 1/4 of said Section 15 to the West 1/4 corner of said Section 15; Thence N89°46'10"W, 2,614.42 feet along the South line of the Northeast 1/4 of said Section 16 to the Center 1/4 corner of said Section 16; Thence N89°49'56"W, 2,636.03 feet along the South line of the Northwest 1/4 of said Section 16 to the West 1/4 corner of said Section 16 and the Southerly Extension of the City of Menasha Corporate Boundary; Thence N00°36'55"E, 2,634.16 feet along the City of Menasha Corporate Boundary, it's Southerly Extension and the West line of the Northwest 1/4 of said Section 16 to the Northwest corner of said Section 16; Thence N00°38'30"E, 2,595.58 feet along the City of Menasha Corporate Boundary and the West line of the Southwest 1/4 of said Section 9 to the Westerly extension of the South right-of-way line of Manitowoc Road (mapped 80 foot right-of-way); Thence Easterly, 2,620.66 feet along the South right-of-way line of Manitowoc Road and it's Westerly extension to the East line of the Southwest 1/4 of said Section 9; Thence Easterly, 2,659.35 feet along the South right-of-way line of Manitowoc Road and it's Easterly extension to the East right-of-way line of Coop Road (66 foot wide road per City of Appleton Corporate Boundary) Thence N00°25'44"E, 40.00 feet along the East right-of-way line of Coop Road to the centerline of said Coop Road; Thence N00°30'00"E, 2,626.90 feet along the East right-of-way line of Coop Road to the North line of the Northwest 1/4 of said Section 10; Thence N00°22'54"E, 5,078.87 feet along the City of Appleton Corporate Boundary, it's Northerly extension and along the East right-of-way line of Coop Road to the Easterly extension of the South line of Loma Lane; Thence N00°31'53"E, 32.95 feet along the City of Appleton Corporate Boundary and the East right-of-way line of Coop Road; Thence S89°15'59"E, 7.00 feet along the City of Appleton Corporate Boundary and the East right-of-way line of Coop Road; Thence N00°31'53"E, 203.05 feet along the City of Appleton Corporate Boundary and the East right-of-way line of Coop Road to a vision corner in the Southeast corner of Calumet Street and Coop Road; Thence N45°38'06"E, 70.56 feet along the City of Appleton Corporate Boundary and said vision corner to the South right-of-way line of Calumet Street; Thence N08°58'34"W, 133.89 feet along the City of Appleton Corporate Boundary to the North right-of-way line of Calumet Street; Thence Easterly, 13,029 feet more or less along the North right-of-way line of Calumet Street (C.T.H. KK) through the intersecting Streets to the Northerly extension of the East line of the Northwest 1/4 of said Section 1; Thence South, 50.00 feet to the North 1/4 corner of said Section 1 and the Point of Beginning.

Total area of described parcel is 3,003 acres more or less.

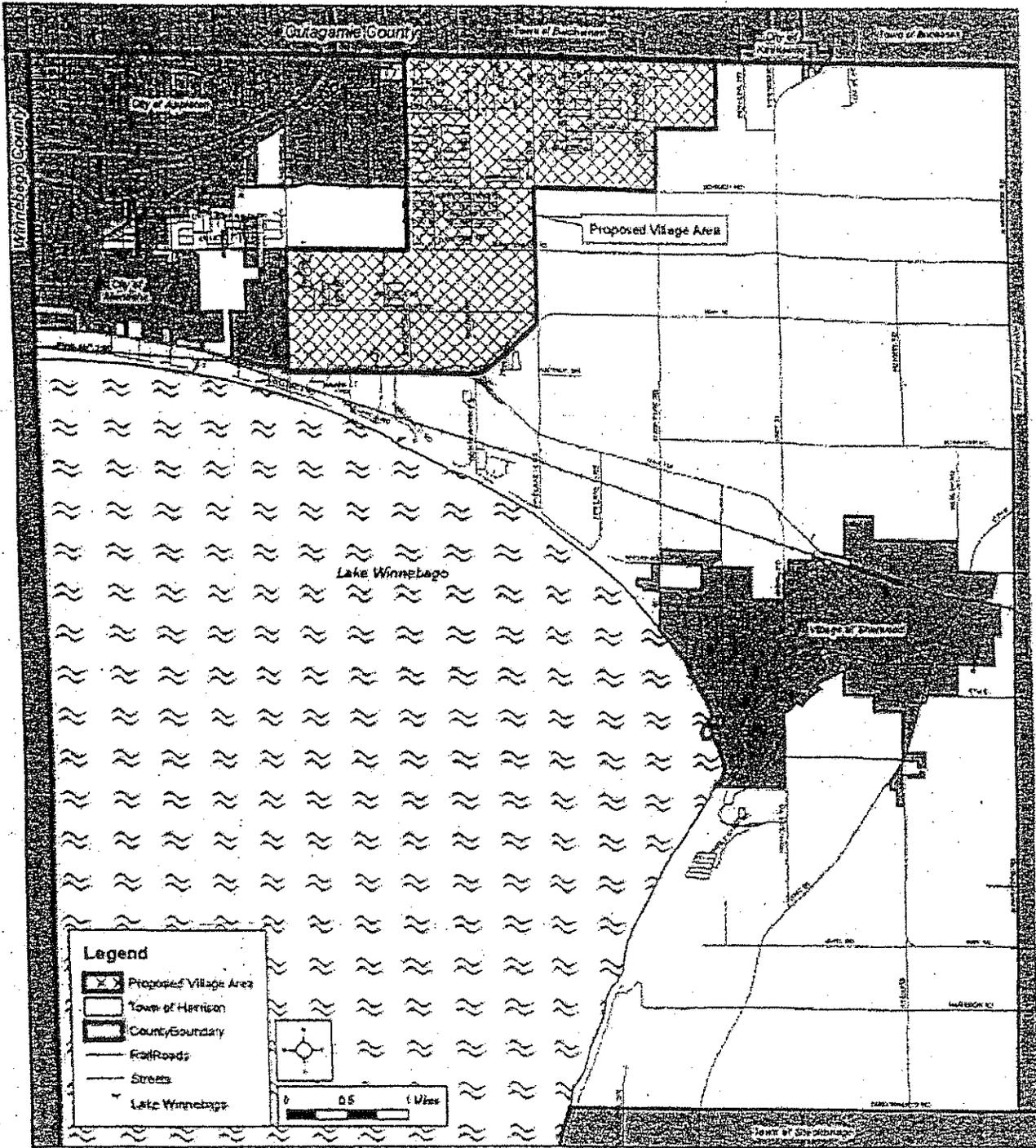


EXHIBIT 1