City of Menasha • Office of the Mayor
Donald Merkes, Mayor
dmerkes@ci.menasha.wi.us

Menasha

TO: Members of the Common Council
FROM: Donald Merkes, Mayor
DATE: 17 March 2014

RE: APPA Legislative Rally
APTA Legislative Conference

The annual APPA Legislative Rally is an opportunity for municipal utilities nationwide to speak to their elected representatives in Washington DC about the value municipal electric utilities provide to their communities. Participating in the Legislative Rally along with 21 other municipal utilities from Wisconsin and Michigan allows us to be proactive in educating elected officials in Washington on how policy decisions they make affect community-owned public power utilities and the customers we serve.

Key federal policy issues discussed at the APPA Rally included:

- Maintaining tax-exempt financing for state and local governments, including public power utilities, in ongoing federal budget and tax reform negotiations.
- Limiting the cost risk for public power utility customers.
- The impacts of EPA regulations on the ability of public power to maintain a diverse portfolio of fuel options to ensure reliable and affordable energy.
- Increasing transparency and oversight of the wholesale electricity markets, and in particular the mandatory capacity markets in eastern regional transmission organization markets
- Addressing cyber-security and physical security and ensuring that the electric utility industry is a partner in creating standards that are reasonable and protect the interests of customers.

As elected officials of public power communities we are in a unique position to talk to Congress about the direct impact of federal action at the local level. Our outreach efforts ensure that the needs of the 46 million Americans who benefit from being served by public power are being met.

The APTA Legislative Conference was also occurring giving opportunity for transit systems across the county to speak to their elected representatives in Washington DC. I was pleased to be able to participate in a discussion with Representative Petri regarding the value of public transportation in the Fox Valley. Of the 1.2 million rides on Valley Transit 40% are job or job training related; in addition, more and more employers are requesting public transit services to their businesses. Transit is an important part of economic development and job retention in the region with federal policy playing a key role in our ability to provide effective service.

Key federal policy issues discussed included:

- Capital funding for transit systems to maintain equipment and infrastructure
- Reauthorization of the Federal Surface Transportation Programs
- Federal funding and reporting requirements

Having the opportunity to meet with our representatives helps solidify the impact that federal programs and decisions have on local economies. In the case of both public power and public transit there is a tremendous positive economic impact to Menasha and the opportunity for employment in our city by maintaining these programs.

WPPI energy

1425 Corporate Center Drive
Sun Prairie, WI 53590-9109
Phone: 608.834.4500 / Fax 608.837.0274
www.wppienergy.org

MEUW Municipal Electric Utilities of Wisconsin

725 Lois Drive
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KEY FEDERAL ISSUES LIST FOR 2014 (TALKING POINTS)

Preserve Tax-Exempt Financing:

- Municipal bonds are a critical tool for public power utilities, and local governments generally, to finance new infrastructure and to maintain and upgrade existing infrastructure.
- Limiting or eliminating the income tax exemption for interest from municipal bonds would reduce investments in vital infrastructure across the country and increase the cost of electricity for public power customers. Ultimately, a disproportionate share of this burden will be shouldered by those who can least afford it.
- We are pleased that throughout the debt limit and budget negotiations this year, Congress has avoided making any changes to or eliminate tax-exempt bonds. Thank You. (For House Members) Please support H.Res. 112, the bi-partisan "Terry-Neal" resolution, in support of municipal bonds. (For Baldwin and Johnson) We are encouraged that the Senate Finance Committee's recent tax reform activities have consistently maintained our tax-exempt status.
- Reducing the availability of tax-exempt financing to municipal governments, either by eliminating TEF or by capping the interest deduction for certain high-income earners, would impose significant new costs on local governments and seriously impair their ability to maintain essential safety and services for their citizens.
- When considering the range of deficit reduction options, we urge Congress to carefully evaluate all of the economic consequences. Any proposal changing the tax treatment of municipal bonds would fail this examination.

EPA Regulation of Carbon Dioxide from Existing Power Plants:

- We are very concerned about the potential impacts of the United States Environmental Protection Agency's (EPA's) regulation of greenhouse gas emissions from new and existing power plants under the Clean Air Act. We are particularly concerned about the new carbon dioxide (CO2) regulations expected to be released this June for existing power plants under section 111(d) of the Clean Air Act.
- We would prefer that Congress act to regulate CO2, because the legislative process is best suited to addressing this important issue. Barring that, Congress should continue to provide active oversight of this EPA initiative. We believe the Clean Air Act allows EPA the authority to enact a rule that requires plant improvements that will result in small but meaningful emissions reductions. Congress should work with EPA to ensure that its proposed rules remain within the parameters that the law allows.
- We provided comments to EPA in December through MEUW. We have asked that EPA consider the following as they draft the rule for existing power plants:
    - **Appropriate Emissions Baseline** – It is critical that a reasonable baseline year is selected to credit proactive utilities that have invested in project-based CO2 emissions reductions; whether that project was part of, or outside of, statutory or regulatory mandates.
    - **Appropriate Compliance Timeline** – It will take time and substantial economic resources to achieve significant emissions reductions. In addition, there is currently no commercially available technology to capture, store and sequester CO2. The economic impact of proposed GHG regulations can be mitigated by adopting a reasonable and phased in approach to implementation.

- **Systemwide Compliance Basis** – Standards should not apply to individual plants because GHG reduction projects at individual plants are extremely limited. Allow entities to average their emissions over their entire fleet or provide for an even broader base for compliance.
- **Allow for Total System Emission Reducing Actions** – Affected entities should be able to comply with the standards of performance utilizing any activities that reduce emissions. These activities include supply- and demand-side energy efficiency measures, and shifting generation from fossil resources to renewables and other emission-free or lower emitting resources.
- **State DNR Flexibility** – The state's environmental agency should be provided flexibility to set CO2 standards based on commercially viable emission reduction systems currently in use for large generation units based on fuel type. This allows state agencies to balance carbon reductions with minimal cost impact to consumers.
- **Recognition of Regional and State Differences** – Standards of performance must recognize significant differences in generation mix, potential for emission reductions, utility industry structure and participation in regional transmission organizations.

A Balanced Approach to Cybersecurity:

- The electric utility industry is the only critical infrastructure sector already subject to mandatory cybersecurity standards that, if violated, can result in penalties up to $1 million per day, per violation.
- Recent administration and congressional proposals could impose additional, duplicative standards on utilities and give ambiguous authority to industry oversight bodies.
- We support cybersecurity legislation that builds on the current NERC-FERC process, enhances information sharing between the government and electric sector, and gives the federal government new – but narrowly crafted and limited – authority in cybersecurity emergencies.
- We also support continued engagement between the government and the industry related to physical security concerns, and believe additional information sharing legislation should incorporate sharing related to both cyber and physical security threats.
- We ask that Congress avoid creating duplicative and overlapping security regimes that will, in fact, reduce the security of the grid.

Limiting Cost Risk for Public Power Utility Customers:

- The ability of public power utilities to hedge power and fuel prices with swaps was inadvertently caught up in regulations intended to prevent another financial meltdown like the one that occurred in 2008.
- Municipal utilities like ours enter into transactions to buy, exchange or transport energy and fuel in order to hedge our commercial operations-related risks. It is a routine part of the way we must do business today.
- The Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 imposed new requirements on "swap dealers and major market participants" who transact with "certain "special entities," including public power utilities. In implementing this legislation, the Commodity Futures Trading Commission (CFTC) wrote rules that also limited non-financial entities' willingness to enter into swap transactions with special entities.
- This has inadvertently hurt public power and natural gas utilities, many of which rely on non-financial entities to hedge against power and fuel price risks. Losing these non-financial counterparties will increase prices and price risks for consumers of affected utilities.
- H.R. 1038, the Public Power Risk Management Act, would correct the unintended consequences of this regulation. The bi-partisan bill passed the House in June by a unanimous vote and its Senate companion bill, S. 1803, has garnered 11 cosponsors thus far. We strongly urge the Senate to pass this bill.

VALLEY TRANSIT
FEDERAL LEGISLATIVE AGENDA

The Federal Transit Administration has been a strong partner in providing transportation in the Fox Cities. Valley Transit faces a number of funding challenges in the future and continues to actively seek and implement solutions to these challenges.

ISSUE: Capital Funding

Adequate capital investment is vital to preserving and renewing transit infrastructure and to maintaining safe, dependable, affordable service for our citizens. Prolonging the use of aging vehicles and facilities beyond a reasonable lifespan is costly and inefficient and diverts limited operating funds from service delivery.

After receiving an average of $12 million in capital funds annually under SAFETEA-LU, federal capital funds for Wisconsin declined by 47%, to just $6.2 million in 2013 under MAP-21. This level of funding does not provide enough dollars to even maintain current assets.

Valley Transit has five buses that date from the early 1990's and the rest will have reached their useful life by 2019. Based on current capital funding levels, it will take Valley Transit 29 years to replace its current fleet of buses.

Without increased federal capital investment, Valley Transit's existing infrastructure cannot be sustained nor can the demand for increased services be addressed.

ISSUE: Reauthorization of the Federal Surface Transportation Programs

Long-term federal commitment and investment is essential in creating sustainable transit infrastructure in the Fox Cities. While MAP-21 provided a funding solution for systems operating fewer than 75 peak-hour buses in urbanized areas over 200,000 in population, its limited duration and diminished transit funding levels compounded with the looming federal gas tax issue has created an uncertain future for Valley Transit and transit systems across the nation.

The current transportation appropriations bill is scheduled to expire in September, and the Congressional Budget Office has projected that the trust fund that is used to pay for most infrastructure projects will run out of money as early as August.

The next reauthorization bill should provide adequate, sustainable funding to meet operating and capital needs and include a revenue solution to the shortfall in the Highway Trust Fund.

ISSUE: Federal Funding and Reporting Requirements

We also ask that the current federal reporting and procurement requirements be reviewed, simplified and streamlined. The current process requires extensive and overly complicated five weeks of training courses to understand procurement policies and related financial information. That, combined with considerable recording and reporting of outcomes is particularly onerous and expensive for small systems with limited staff.

FOR MORE INFORMATION:
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Deborah.Wetter@appleton.org
www.myvalleytransit.com

Valley Transit
Connecting the Fox Cities

VALLEY TRANSIT
STATE LEGISLATIVE AGENDA

The Wisconsin Department of Transportation has been a strong partner in providing transportation in the Fox Cities. Valley Transit faces a number of funding challenges in the future and continues to actively seek and implement solutions to these challenges.

ISSUE: State Funding Cut to Continue in 2014

The 2013/2015 biennial budget continues the 10% funding cut to Wisconsin transit systems for 2014. Valley Transit has been successful in identifying one-time funding sources to fill the state funding gap over the last 3 years and a greater share of operating costs has been pushed to local municipalities. State imposed levy limits have left municipalities with few options.

The 2013/2015 State Budget increases funding by 4% in 2015 but is still well under historic levels and not in line with the Wisconsin Transportation Finance and Policy Commission's recommendation which is to restore the full $9.3 million in funding that was cut in the 2011/2013 biennial budget.

ISSUE: Need for Sustainable Funding

We need to find a sustainable funding mechanism that allows us to create a transit system that truly meets the needs of the people it serves and allows us to operate and plan more efficiently. That can be done if the state gives us the right to form a regional transit authority so we have the option for an additional local funding source other than property tax.

Earlier this year, State Senator Mike Ellis and Representative Penny Bernard Schaber introduced bills (Senate Bill 259 and Assembly Bill 349 respectively) which would authorize the creation of a Fox Cities RTA with the ability to pass a local sales tax to fund public transit in the Fox Cities. On February 11, 2014, Senate Bill 259 was approved 25/7 by the state senate with an amendment.

Highlights of amended Senate Bill 259:

- Authorize creation of Fox Cities Regional Transit Authority.
- Ability to impose a sales tax of up to 0.25% to fund public transit.
- This is a special sales tax and has no effect on the county's ability to levy a sales tax.
- Two or more municipalities in the Fox Cities metropolitan planning area must adopt a resolution authorizing the municipality to become a member.
- Resolution must be ratified by the electors of the municipality in a referendum. The resolution must specify the exact amount of the tax (either 0.1% or 0.2%).
- Any future increase in the tax rate requires another referendum of the citizens of the member municipalities.
- The sales tax is only collected in the municipalities that are members of the RTA.
- The Board of Directors must be made up of elected officials of one or more of the RTA participating municipalities.

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Valley Transit
Connecting the Fox Cities

VALLEY TRANSIT BY THE NUMBERS 2013

1,274,139 RIDES ON ALL SERVICES

1,093,202 RIDES ON FIXED ROUTE

18 FIXED BUS ROUTES

3 TRIPPER ROUTES

1 CALL-A-RIDE ZONE

216,154 URBANIZED POPULATION

117 SQUARE MILE RADIUS

27 BUSES IN FLEET

21 PEAK HOUR BUSES

201,770 RIDES TAKEN BY AASD STUDENTS

40% OF TRIPS TO JOBS OR JOB TRAINING

13 Municipalities as Local Funding Partners

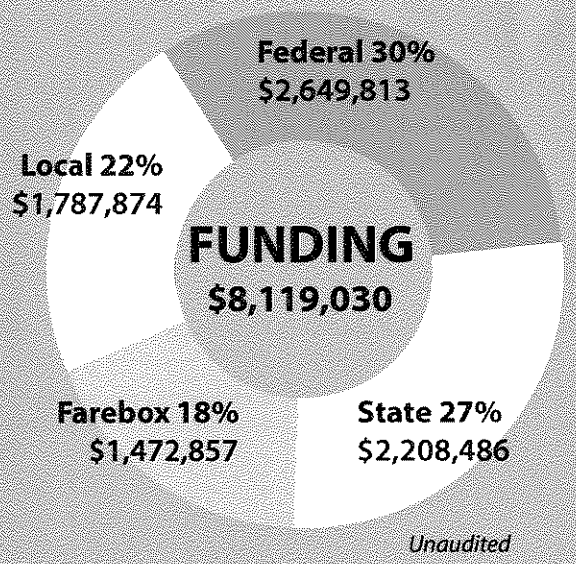
City of Appleton
City of Kaukauna
City of Menasha
City of Neenah
Town of Buchanan
Town of Grand Chute
Town of Harrison
Town of Menasha
Village of Kimberly
Village of Little Chute
Calumet County
Outagamie County
Winnebago County

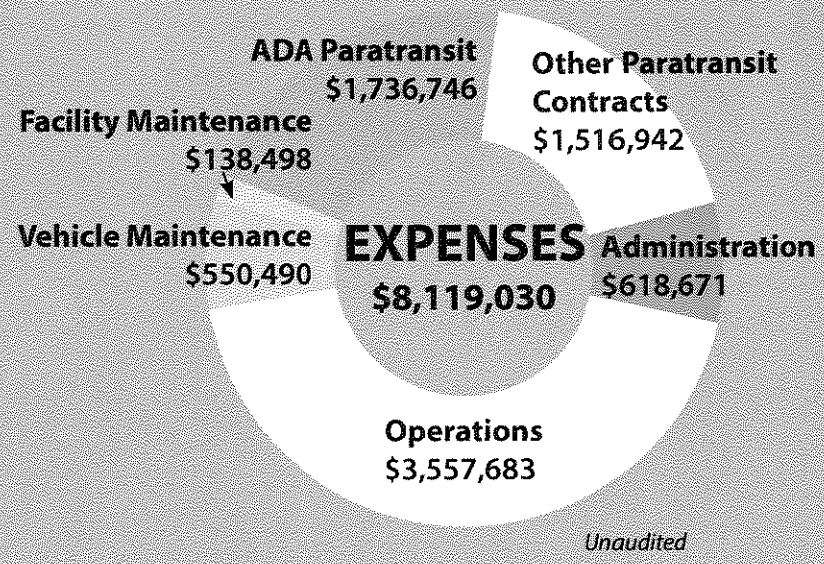
Other Local Funding Partners

Appleton Area School District
Appleton Downtown Inc.
Community Care
Community Foundation of the Fox Cities
IRIS
Lakeland Care District
Menasha Corp. Thrivent Financial for Lutherans
United Way Fox Cities

Effective: February 2014

Valley Transit
Connecting the Fox Cities





10 SERVICES PROVIDED

- Fixed Route Bus Service
- Valley Transit II ADA Paratransit
- Appleton Downtown Trolley
- Calumet County Rural Transportation
- Call-A-Ride
- The Connector
- New Hope Transportation
- Northern Winnebago County Dial-A-Ride
- Outagamie County Employment
- Outagamie County Rural

KEY ACCOMPLISHMENTS

- Completed ADA remodel of Administrative Office to make main entrance and public restroom ADA accessible.
- Replaced a fully depreciated supervisor vehicle with a Ford Escape.
- Worked with Outagamie County to provide three 1,000# lift capacity vehicles for paratransit services.
- Settled labor contract with 2 two-year contracts which include employees contributing more to pension and health care costs and getting modest pay increases to compensate.
- Awarded grant from WisDOT using federal planning money to develop a strategic plan and conduct a rider survey with local shared coming from the Community Foundation of the Fox Valley Region.
- Implemented SMS/text message program allowing customers to text with their bus stop ID to get real-time bus arrival information.
- Launched myvtbus.com – an e-alert service that allows customers to sign up to receive email alerts on a variety of topics including alerts, detours, promotions and other information.

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Valley Transit
Connecting the Fox Cities

WISCONSIN URBAN & RURAL TRANSIT ASSOCIATION

LEGISLATIVE AGENDA 2014

FEDERAL LEGISLATIVE PRIORITIES

Shifting Demographics

Federal transportation policy and investment should address changing demographics and an increased demand for public transportation.

For the first time in our history, Americans are driving less. Both younger adults and a growing senior population are seeking alternatives to driving. Nearly half of America's 82 million baby boomers are over age 65 today and nearly 90% of them will be over age 65 by 2031. Seniors are retiring to areas that offer amenities like shopping, health care and social activities. They are continuing to work while living a more frugal lifestyle, which may not include car ownership. Their freedom to remain in their home, participate in the economy and stay active in the community will increasingly depend upon the availability of public transportation.

Unlike older generations, our youngest adults, the 71 million born after 1980, are opting for transportation alternatives instead of driving. They like telecommuting, online shopping and real-time transit technology and they are forgoing a driver's license, even after obtaining employment. Whether it is increasing debt after college, stagnant wages, high cost of car ownership or concern for the environment, younger adults are increasingly depending upon public transportation.

Without adequate funding resources, the emerging transit demand from young adults and a growing senior population will be unmet. Communities failing to address this demand will be at risk of losing population, tax base and economic activity. It is for this reason that Federal investment in public transportation infrastructure is of vital importance.

Reauthorization of the Federal Surface Transportations Program

The next reauthorization bill should be of longer term and provide adequate, sustainable funding to meet operating and capital needs for Wisconsin transit systems.

Long-term Federal commitment and investment is essential for developing and maintaining vital transit infrastructure in our communities. While MAP-21 is an innovative plan, its limited duration and lack of sustainable funding sources provide little certainty for the future. Unfortunately for Wisconsin, that uncertainty is compounded by diminished transit funding levels under Map-21 overall. Wisconsin received $80.9 million in Federal transit aids in 2012 under SAFETEA-LU, but just $78 million in 2013 under MAP-21. Although Wisconsin

accounts for 1.8% of the nation's population, it receives just .74% of the nation's transit funds (down from .9% in 2012).

Wisconsin did receive a modest increase in Federal operating funds in 2013, but that increase was more than offset by a dramatic cut in Federal capital investment. After receiving an average of $12 million in capital funds annually under SAFETEA-LU, Federal capital funds for Wisconsin declined by 47%, to just $6.2 million in 2013 under MAP-21. As a result, the backlog of unmet transit capital needs in Wisconsin has grown; replacement of vital capital assets has become more critical; and planning for the future has become less certain.

It is imperative that the next federal reauthorization provide increased levels of capital and operating funding for transit systems, backed by sustainable revenue sources to offset declining gas tax revenues. Moreover, transit funding formulas should be revised so that Wisconsin receives a more equitable share.

Capital Funding

Capital funds for Bus and Bus Related Facilities were reduced dramatically in Map-21. Wisconsin transit systems are in dire need of additional Federal capital investment.

Adequate capital investment is central to preserving and renewing transit infrastructure and for maintaining safe, dependable, affordable service for our citizens. Prolonging the use of aging vehicles and facilities beyond a reasonable lifespan is costly and inefficient and it diverts limited operating funds from service delivery. Reduced availability of Federal capital dollars in recent years has resulted in a significant backlog of unmet capital needs for Wisconsin transit systems. Particularly acute is the need to replace fleet vehicles. Although Fixed Guideway Modernization and Bus & Bus Facilities programs most benefit Wisconsin, MAP-21 diverts funding from those programs to New Starts/Small Starts programs. Instead of an average annual investment of $12 million in capital funding under SAFETEA-LU, Wisconsin now receives $6.2 million under MAP-21. Without increased federal capital investment, Wisconsin's existing transit infrastructure cannot be sustained nor can the demand for increased services be addressed. Identifying a means for increased access to capital funding for buses and bus facilities is a critical priority.

Economic and Community Development Legislation

Federal economic or community development legislation should include funding to enhance the availability of public transportation.

Public transit is an essential resource for workers to access jobs and for businesses to access workers. Investment in public transit promotes business expansion and economic growth worth more than the value of the initial investment. The American Public Transportation Association (APTA) estimates that for every $1 invested in public transportation, $4 in economic returns are generated. Public transit is poised to play a vital role as Wisconsin and the nation look for ways to create economic opportunities and get people back to work. Legislation promoting economic or community development should include investment in pedestrian and transit infrastructure and expanded transit services.

STATE LEGISLATIVE PRIORITIES

Transit Operating Assistance

Transit funding should be restored to historic levels and should continue to be drawn from the segregated transportation fund.

For many years, public transit has been an important part of Wisconsin's multimodal transportation infrastructure and the State has maintained a strong commitment to fund public transit services. But in recent years, the State has significantly reduced transit investment and a greater share of transit operating cost has been shifted to local municipalities. State imposed levy limits and reduced shared revenue payments have left municipalities with few options and transit service cuts and increased passenger fares have been the consequence. Reduced transit services have disproportionately impacted the working poor and middle class families, who rely on the basic mobility that transit provides to access employment and educational opportunities. Increased passenger fares have made transit services less affordable, especially for those who need them most. Although targeted State funds for paratransit services have mitigated the growing cost of paratransit programs, dramatic cuts in State transit operating aids have caused cuts to bus services and paratransit services alike.

WURTA supports recommendations from the Wisconsin Transportation Finance and Policy Commission to restore the annual $9.3 million cut to public transit implemented as part of the 2011–13 biennial budget and restoration of an additional $9.5 million annually to bring transit tier funding back to historic levels; and that WisDOT be provided the administrative flexibility to adjust the transit funding tiers in accordance with changes in federal law that would alter the allocation of funds to transit systems.

Regional Transit Authorities (RTAs)

Approve regional transit authority (RTA) enabling legislation that would allow local residents to consider the creation of local or regional funding alternatives.

Municipalities throughout Wisconsin have banded together for many years to provide essential public transit services for their community. By sharing financial resources and coordinating transit service delivery, they have gained the efficiency and cost savings demanded by taxpayers, while providing basic mobility for citizens. The arrangement is an extraordinary example of inter-municipal cooperation and it represents a significant investment in the local economy.

Unfortunately, public transit services throughout Wisconsin are at risk. Municipalities have no alternative local funding sources with which to respond when State and/or Federal funding sources are reduced. State imposed levy limits leave municipalities with few options. Transit service cuts and increased passenger fares are increasingly the result and diminished mobility for those who rely on public transit to conduct their daily lives is the consequence.

WURTA supports the recommendations from the Wisconsin Transportation Finance and Policy Commission to enactment legislation that permits the creation of RTAs, financed by dedicated county or local sales taxes. This same model is permitted in all other Midwestern states. In those states, visitors to the community help pay the cost of transit services via sales tax revenues.

In Wisconsin, the cost of transit services remains the sole responsibility of local taxpayers through the overburdened property tax.

RTAs could provide a predictable, dedicated funding source and remove transit costs from the property tax. RTAs could also help to stabilize transit services; preserve mobility for a growing senior population; and address the increasing demand for accessible transportation for those with disabilities. Without RTA enabling legislation, the future of public transit in Wisconsin will remain at risk. It is important to note that passing RTA-enabling legislation will not create a tax or an RTA. It will simply provide residents the right to decide what they want the future of their public transit system to be and whether they want to tax themselves to pay for it.

Establish Transit Capital Investment Program

Create a State transit capital investment program to replace lost Federal capital funds, so that vital transit vehicles, facilities and equipment can be maintained and replaced.

Adequate capital investment is necessary to preserve and renew transit infrastructure and to maintain safe, dependable, affordable services. The availability of Federal capital funds has declined in recent years – falling from $12 million under SAFETEA-LU to just $6 million under MAP-21. The result is a significant backlog of unmet capital needs for Wisconsin Transit Systems. Failure to replace this funding and address these capital needs will result in the decay of transit infrastructure and the diversion of limited operating funds from service delivery. In order to avoid the deterioration of vital public transit services, the State of Wisconsin must provide transit capital assistance. WURTA supports the recommendations from the Wisconsin Transportation Finance and Policy Commission to create a state transit capital program of $15 million annually or $150 million over 10 years.

Coordinate Public Transit and Human Service Transportation

The State should reexamine its non-emergency medical transportation (NEMT) brokerage and endeavor to remove barriers to transportation coordination.

WURTA believes that coordinating resources in providing and administering transportation services is good public policy and in the best interest of Wisconsin citizens. Despite Federal policy directives to coordinate transportation resources between public transit and human service providers, the Wisconsin Department of Health Services designed and implemented its Medicaid non-emergency medical transportation (NEMT) brokerage in isolation and created a taxpayer funded program that seems to serve the broker alone. The brokerage has driven demand and cost for other programs and providers, without sharing in the cost; displaced coordinated programs previously operated by counties; established procedures for users that diminish access to Medicaid transportation; and forced some private transportation providers out of business entirely. The result is a collapsing human service transportation network with gaps in accessible services and an increased burden for underfunded public transportation systems, charities and local governments. WURTA supports the Statewide Coordination Model and the recommendations contained in the Interagency Council on Transportation Coordination (ICTC) final report. All State agencies should remove administrative barriers to transportation coordination, educate administrators about regional service coordination opportunities, and eliminate duplication of efforts for all transportation programs.

MEMORANDUM

Date: March 28, 2014

To: Common Council
From: Pamela A. Captain, City Attorney
PAC

RE: City of Kaukauna et al. v. Village of Harrison et al.
Calumet County Case No. 2013CV159

City of Menasha v. Waverly Sanitary District et al.
Calumet County Case No. 2016CV189

City of Kaukauna et al. v. Village of Harrison et al.
Calumet County Case No. 2013CV159

A hearing was held on March 14, 2014, for a court order on motions to compel discovery and for a protective order. The court reviewed the parties briefing on the matters and after oral argument issued an order granting the motion to compel in part and for protective order with respect to the documents in the privilege log on the basis of claimed lawyer/client privilege.

The parties will now continue preparing briefs and compiling documentation in support of motions for summary judgment. Plaintiff's briefs are due by June 30, defendant's briefs by August 18 and reply briefs by September 8. The court will hear oral arguments on the motions scheduled for October 3, 2014.

City of Menasha v. Waverly Sanitary District et al.
Calumet County Case No. 2013CV189

On March 21, 2014, I filed Menasha's Brief in Support of Declaratory Judgment and a Supplemental Filing in Support of Temporary Injunctive Relief in the matter. For your reference a copy of the brief is attached. Response briefs are due April 21st, reply briefs are due May 2 and oral argument will be heard by the Court on May 6, 2014. The parties decided to stage briefing in this matter limiting initial briefing to a few dispositive issues and depending on how the court rules, move into subsequent briefing as needed.

STATE OF WISCONSIN CIRCUIT COURT CALUMET COUNTY

CITY OF MENASHA,

PLAINTIFF,

v.

WAVERLY SANITARY DISTRICT and
CITY OF APPLETON and
TOWN OF HARRISON and
VILLAGE OF HARRISON,

DEFENDANTS.

CASE NO. 13-CV-189
Case Code: 30701

AUTHENTICATED COPY
Case #13CV189
MAR 21 2014
Calumet County Clerk of Courts
Barbara VanAkkeren

CITY OF MENASHA BRIEF IN SUPPORT OF DECLARATORY JUDGMENT

STATEMENT OF FACTS

In 1972, the Town of Harrison town board created Waverly Sanitary District, a town sanitary district, which became operational in 1984. The statutory framework creating Waverly Sanitary District is §60.71, Wis. Stats. Waverly Sanitary District (Sanitary District) provides sanitary sewer and water services to users in the City of Menasha (City), the City of Appleton (Appleton), the Village of Harrison (Village), and the Town of Harrison (Town).

Pursuant to §60.71(5), Wis. Stats., the Sanitary District consists of territory only within the Town. The district boundaries of the Sanitary District prior to March 8, 2013 are shown in **EXHIBIT A**. Effective March 8, 2013, part of the Town incorporated as the Village. As a result of the partial incorporation, the district boundaries of the Sanitary District shrunk. The Sanitary District's boundaries effective March 8, 2013 are shown in **EXHIBIT B**. Prior to March 8, 2013, the Sanitary District served: 1003 Town of Harrison patrons; 898 City of

Menasha patrons; and 67 City of Appleton patrons. *Affidavit of Greg Keil.* Effective March 8, 2013, the Sanitary District served: 898 City of Menasha patrons; 763 Town of Harrison patrons; 240 Village of Harrison patrons; and 67 City of Appleton patrons. *Affidavit of Greg Keil.*

The City of Menasha Common Council responded to the partial incorporation of the Town by adopting Resolution, R-10-13, on August 1, 2013. This resolution set forth the City's opinion regarding the statutory impact of the partial incorporation on the Sanitary District. In particular, the City concluded that because the Sanitary District now served more patrons living in the City of Menasha than patrons living in the Town, Village, or City of Appleton, Wis. Stat. §60.79(2)(dm) required that the ownership and operational control of the Sanitary District's sewer and water system be transferred to the City of Menasha. Under §60.79(2)(d), each location served is considered one patron.

On October 16, 2013, the City filed this suit seeking a declaration regarding the legal status of the Sanitary District in light of the partial incorporation of the Town and the statutory mandate in §60.79(2)(dm). The Town, Village, and Sanitary District have filed answers opposing the City's request for declaratory relief and rejecting the City's interpretation of § 60.79(2)(dm). The City of Appleton has filed an answer requesting that the court declare the parties' respective rights under the statute.

ARGUMENT

A. Under Wis. Stat. § 60.79(2)(dm), the City of Menasha Became the Proper Owner and Operator of the Sewer System as a Result of the Town's Partial Incorporation.

Under Wisconsin law, town boards are specifically authorized to create town sanitary districts. Wis. Stat. § 60.71. The territory of a town sanitary district is strictly limited to

preclude territory located within a village or city, § 60.71(5), though town sanitary districts can provide service to city and village residents pursuant to contract.

In establishing the statutory scheme applicable to town sanitary districts, the Wisconsin legislature recognized that town sanitary districts would necessarily change over time, as cities grow, territory is annexed, or all or portions of the town are incorporated. Therefore, the legislature created specific statutory provisions to address various problems and confusion that may develop as such growth and changes occur. *See* Wis. Stat. §§ 60.785, 60.79(1); 60.79(2); *Town of Sheboygan v. City of Sheboygan*, 203 Wis.2d 274, 281, 553 N.W.2d 275, 278-279, (Ct. App. 1996). Relevant to this case, § 60.79(2) provides detailed direction as to what happens to a town sanitary district as a result of partial incorporation of a town sanitary district. Under this statute, the partial incorporation of the Town of Harrison requires that the ownership and operation of the sewer and water system currently operated by the Sanitary District be transferred to the City of Menasha.

1. Wis. Stat. § 60.79(2)(dm) governs this case.

Wis. Stat. §60.79(2) is titled "Incorporation or Annexation of Part of a Town Sanitary District." That is precisely the situation at issue in this case. The Town of Harrison was partially incorporated to form the Village of Harrison. Under § 60.79(2)(a), the partial incorporation automatically detached the incorporated area from the sanitary district. This means that the territory comprising the Village of Harrison is no longer part of the Sanitary District. However, because the Village is still being serviced by the Sanitary District, it is necessary to consider the remaining provisions of § 60.79(2), namely, subsections (2)(c) through (2)(e). *See* § 60.79(2)(b) ("The city or village and the town sanitary district are subject to pars. (c) to (e) if territory

constituting less than the entire town sanitary district is annexed or incorporated and . . . [t] he territory is served by the town sanitary district with a water or sewerage system."); *see also Town of Hallie v. City of Eau Claire*, 173 Wis. 2d 450, 455, 496 N.W.2d 656, 658 (Ct. App. 1992).

Of particular import to this case is § 60.79(2)(dm). That subsection provides in full:

> If the responsibility for continuing the operation is vested in the town sanitary district, it shall continue, except by agreement, until the proportion of users changes so that a majority of the patrons reside in the city or village, at which time the property and the responsibility shall shift to the city or village.

Wis. Stat. § 60.79(2)(dm). In other words, the town sanitary district will continue to own and operate the sanitary system unless, as a result of the incorporation, the majority of users of the system reside outside the town sanitary district's defined territory. Once the majority of users live outside the town sanitary district's territory, the property and responsibility *shall* shift away from the town sanitary district.

In their answers to the City's declaratory judgment complaint, the Town, Village and Sanitary District suggest that § 60.79(2), and subsection (2)(dm) in particular, do not apply to this case because the Sanitary District services multiple municipal entities, not just a single town or village. Additionally, they argue that subsection (2)(dm) provides only that a recently incorporated city or village, such as the Village of Harrison, would gain ownership and control of a sanitary system as a result of a recent incorporation or annexation.

Defendants have no legal authority to support these arguments. Moreover, these arguments make no sense. Section 60.79(2) is the only statute applicable to partial incorporation of town sanitary districts, and it is clear from the language of the statute that the legislature intended for this statute to provide clear guidelines for transitions within a town sanitary district. "The aim of all statutory interpretation is to discern the intent of the legislature." *Wagner Mobil,*

Inc. v. City of Madison, 190 Wis. 2d 585, 591, 527 N.W.2d 301, 303, (1995). Here, the legislature clearly anticipated that town sanitary districts would not exist indefinitely. For ease of transition, the statute provides that a town sanitary district may continue to operate even after parts of the original district boundaries become city or village territory. Over time however, when the majority of users fall outside the town territory, the ownership and operation of the sanitary system must transition. This is because it would not be reasonable for a town sanitary district to continue to exist when town patrons no longer make up the major portion of the patrons of the system. Subsection (2)(dm) specifies the point at which that final transition occurs.

It makes no sense to look at the proportion of users of the system in a vacuum with only consideration being given to the number of Town users versus the number of Village users, as there are other municipal entities affected by the substantial reduction of the number of patrons who reside in the Town resulting from the partial incorporation. It is not just the recent annexation or incorporation of a specific area that is relevant to the transition in ownership. Rather, it is the fact that the proportion of town users has shrunk to the extent that they are no longer the majority of users in the system. In order to evaluate the current makeup of users in a sanitary system, it is necessary to consider all the municipalities and users served by a town sanitary district, not simply the most recently incorporated entity.

In this case, that occurred with the partial incorporation of the Town of Harrison. Until that partial incorporation, the Sanitary District served mostly Town residents. Since the incorporation, Town residents no longer make up the majority of users. That shift has triggered the application of subsection (2)(dm).

2. Under § 60.79(2)(dm), the City of Menasha is the proper owner and operator of the sanitary sewer system because the highest proportion of users serviced by the current Sanitary District are City residents.

Under § 60.79(2)(dm), the ownership and operation of a town sanitary district transfers from the town sanitary district to a city or village when "the proportion of users changes so that a majority of the patrons reside in the city or village." Defendants Town, Village and Sanitary District argue that this means that the Sanitary District retains control of the sanitary system so long as no city or village holds a 50% "majority" of the users of a system. According to defendants' arguments, although the Sanitary District services more users in the City of Menasha than in the District, Town, Village or City of Appleton, the City of Menasha is not the proper owner because it does not hold a 50% majority of users.

Defendants' interpretation of the statute elevates form over substance and would defeat the legislative intent of an orderly transition that vests responsibility for the provision of sewer and water service in the hands of the entity whose residents are most affected by the system. The plain meaning of the statute is to transition ownership from a town sanitary district to a city or village once the majority of users do not reside within the town sanitary district. This does not mean that a 50% majority of users must reside within a single city or village. This simply means that once fewer than half of the users reside outside the town sanitary district, the district should no longer control the sanitary system. This makes sense in terms of the natural progression of growth anticipated by the legislature.

Moreover, the only fair and just interpretation is one that transitions ownership away from a town sanitary district once the town residents are the minority of system users. Pursuant

to statute, only town residents can act as commissioners on the town sanitary district. Wis. Stat. § 60.75(3). If the town sanitary district remained as the owner and operator of a system despite comprising a minority of users, there would be an unfair lack of representation for the majority of the users of the system. As applied in this case, the Sanitary District would continue to operate the system, while the users residing in the City of Menasha, who comprise the largest group of users in the system, are left with no representation or influence in the operations of the district. Such a result would fly in the face of our system of a representative government. Certainly, the legislature did not intend this kind of absurd result.

It should also be noted that the statute does not state that a city or village must hold a "50%" majority before taking control of a sanitary sewer system. In this case, no entity has a 50% majority of Sanitary District patrons residing within its territory. Given that there are three municipal entities, the City of Menasha, the City of Appleton, and the Village, it is highly unlikely that any single entity will ever acquire a 50% majority of Sanitary District users. However, it is inevitable that additional annexations into the Town will occur and the Town and the number of Sanitary District patrons residing within the district will continue to shrink. On August 6, 2013, the Village of Harrison adopted an ordinance adding more Town of Harrison territory to the Village of Harrison which further reduced the number of patrons residing within the Sanitary District. The Sanitary District's boundaries effective after the adoption of the August 6th, 2013, ordinance are shown in **EXHIBIT C**. Indeed, the only territory that remains in the Town is territory that is defined as the growth areas of the Cities of Menasha and Appleton under separate Intermunicipal Agreements with the Town. From a fiduciary perspective, it does not make sense that the Town of Harrison and the Sanitary District argue that they will be

harmed by the dissolution of the town sanitary district since more of the remaining territory in the Town is due to come into the City of Menasha via future annexations anyway.

In sum, there is no agreement by and among all of the parties affected as to how the recent incorporation affects the Sanitary District. Accordingly, § 60.79(2)(dm) governs this case. That statute takes into consideration all users and municipalities affected by the Sanitary District, with the result being that control of the sanitary system should be transferred to the City of Menasha.

B. The City of Menasha is Not Barred by any Intermunicipal Agreement from Seeking a Declaration of the Parties' Respective Rights In Light of the Partial Incorporation of the Town and Wis. Stat. § 66.79(2)(dm).

In their answers to the City of Menasha's underlying Petition for Declaratory Judgment, the Town, Village and Sanitary District contend that the City is precluded from seeking a declaration of rights regarding the Sanitary District by an Intermunicipal Agreement entered into between the City, Town and Sanitary District. That Agreement, which was signed on October 28, 1999, contains a provision stating that:

> 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.

EXHIBIT D, ¶ 9.

The City of Menasha does not dispute that the October 28, 1999 Intermunicipal Agreement is effective and governs several aspects of the relationships between the parties. However, this agreement does not preclude the filing of this lawsuit.

Through this lawsuit, the City merely seeks a judicial interpretation of the statutory effect that the partial incorporation of the Town had on the ownership and operation of the Sanitary District. The City has not taken any affirmative action to dissolve the Sanitary District. Rather, it is the City's position that the statute, § 60.79(2)(dm), *mandates* that the ownership of the Sanitary District be transferred to the City. *See* § 60.79(2)(dm) ("until the proportion of users changes so that a majority of the patrons reside in the city or village, at which time the property and the responsibility *shall* shift to the city or village") (emphasis added). Neither this, nor any other agreement between the parties addresses what should happen to the Sanitary District in the event of incorporation or annexation. The Agreement also does not address what would happen to the Sanitary District in the event that the majority of users of the system reside outside the Sanitary District. Given the lack of guidance in the Agreement, the City is merely seeking statutory interpretation of this provision and of the parties' respective rights. There is nothing in the language of the Intermunicipal Agreement that prevents the City from seeking such clarification.

It is bad faith on the part of the Town and Sanitary District to argue against the transition of the Sanitary District to the City, when the only territory remaining in the Sanitary District and the Town is that which is due to come into the City of Menasha[1] pursuant to the very Intermunicipal Agreement the Town and Sanitary District have produced in this case. If the only territory that remains in the Town and Sanitary District is due to come into the City of Menasha (or Appleton) under the terms of the Intermunicipal Agreement, what legitimate purpose is served by the Town and Sanitary District opposing the transition of the Sanitary District?

[1] Or the City of Appleton under a separate intermunicipal agreement, but due to the low number of patrons residing in Appleton is not pertinent to the primary issue before this Court.

As stated above, the Intermunicipal Agreement does not address what happens when the proportion of users changes. Nor could it. The Agreement is not signed by all of the municipal entities affected by the Sanitary District. Without an agreement signed by all affected parties clearly explaining the effect of incorporations, annexations and changes in user proportionality among the municipalities, § 60.79(2)(dm) must govern and the City is entitled to seek interpretation of that statute as applied to this.

Finally, there is nothing that prevents Appleton or any other patron of the Sanitary District from asking the same question. If the Court concludes that the City of Menasha should not have brought this declaratory suit, the City will request leave to amend the Complaint to add a patron of Waverly Sanitary District as a petitioner.

CONCLUSION

The March 8, 2013 partial incorporation of the Town of Harrison to the Village of Harrison triggered the application of §60.79(2)(dm), Wis. Stats., requiring that the ownership and operation of Waverly Sanitary District, sanitary sewer and water, be transferred to the City of Menasha, since the proportion of users changed with the majority of patrons residing in the City.

Respectfully submitted this 21st day of March, 2014.

Pamela A. Captain
City Attorney for the City of Menasha
State Bar Number 1023192

140 Main Street
Menasha, WI 54952
(920) 967-3608

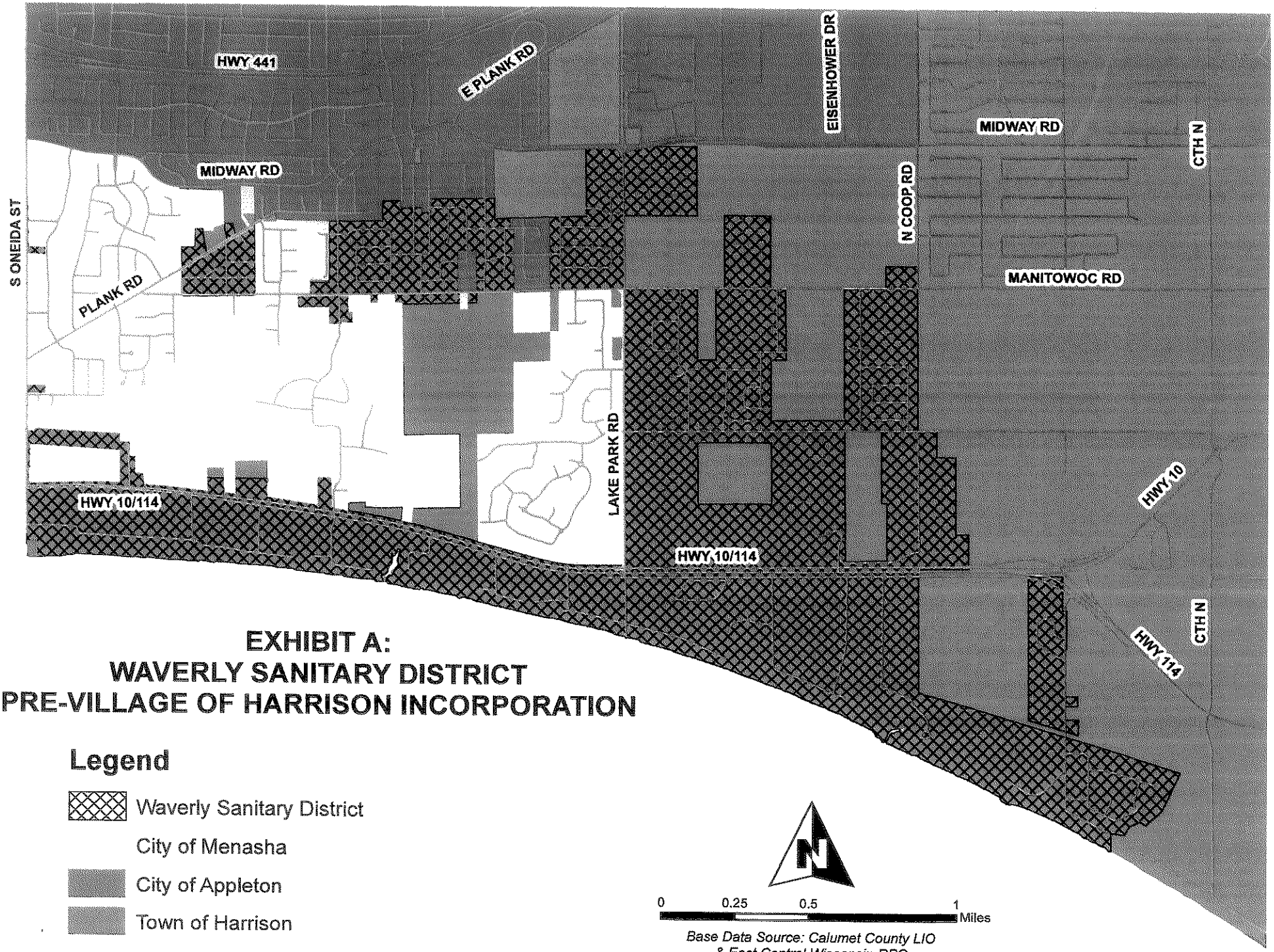

EXHIBIT A:
WAVERLY SANITARY DISTRICT
PRE-VILLAGE OF HARRISON INCORPORATION

Legend

- Waverly Sanitary District
- City of Menasha
- City of Appleton
- Town of Harrison
- Road Centerlines

Base Data Source: Calumet County LIO & East Central Wisconsin RPC

EXHIBIT A

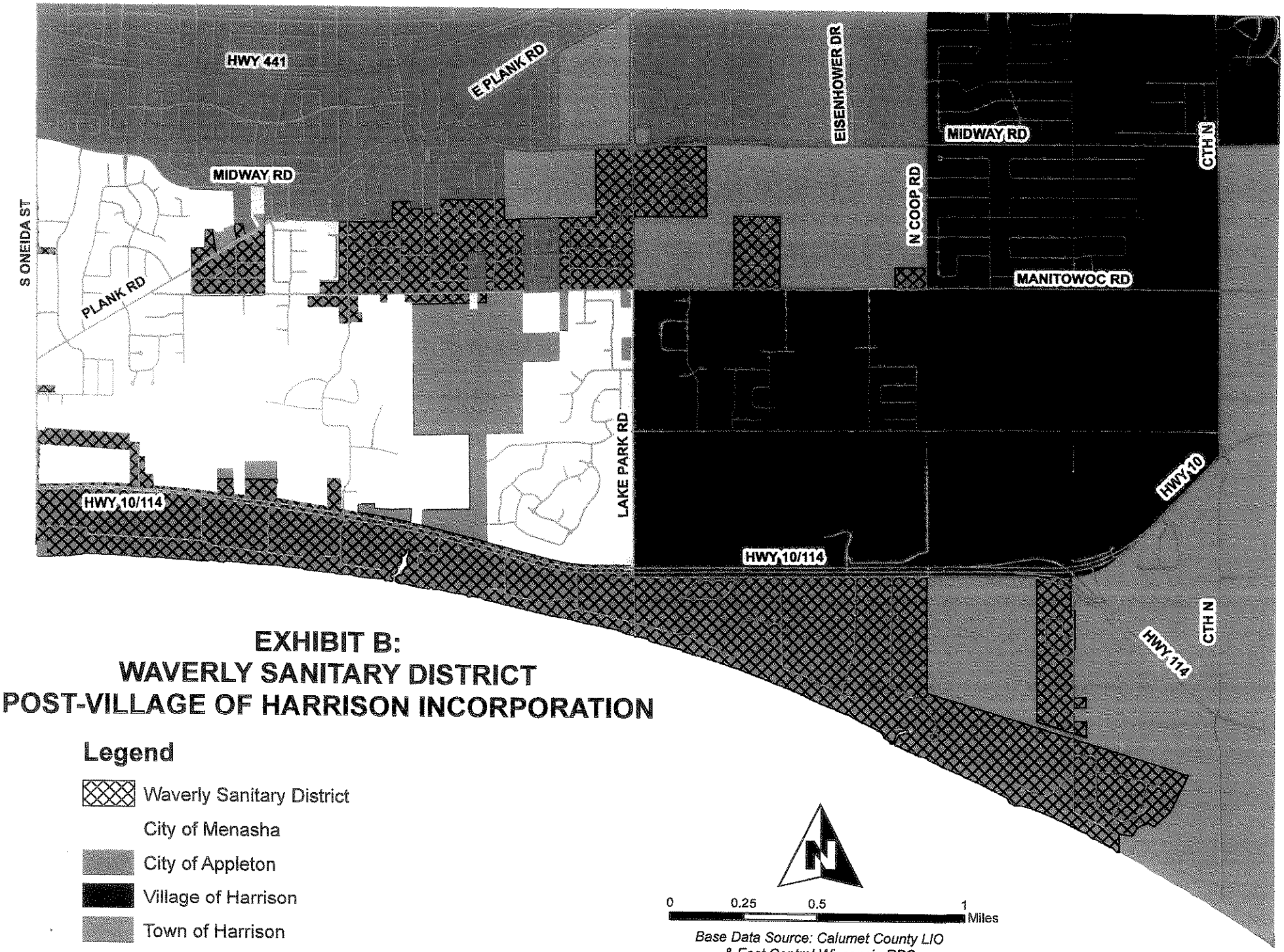

EXHIBIT B:
WAVERLY SANITARY DISTRICT
POST-VILLAGE OF HARRISON INCORPORATION

Legend

- Waverly Sanitary District
- City of Menasha
- City of Appleton
- Village of Harrison
- Town of Harrison
- Road Centerlines

EXHIBIT B

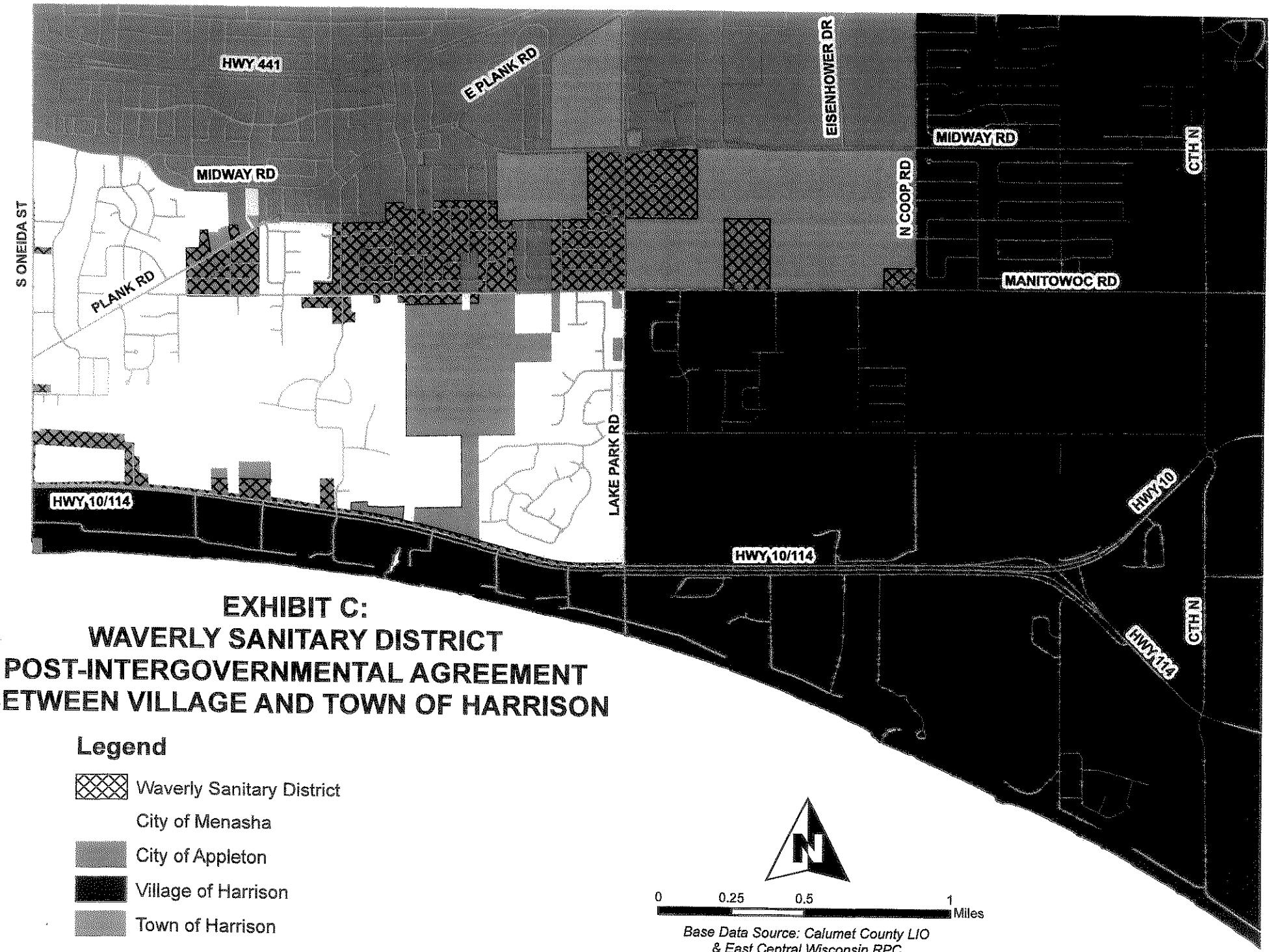

EXHIBIT C:
WAVERLY SANITARY DISTRICT POST-INTERGOVERNMENTAL AGREEMENT BETWEEN VILLAGE AND TOWN OF HARRISON

Legend

- Waverly Sanitary District
- City of Menasha
- City of Appleton
- Village of Harrison
- Town of Harrison
- Road Centerlines

Base Data Source: Calumet County LIO & East Central Wisconsin RPC

EXHIBIT C

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 D

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. Laux, 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. Cheypool~~

WAVERLY SANITARY DISTRICT:

Donald Doule, Chairman

Cathy Girdley, District Clerk

Approved as to form:

Charles J. Hartzheim

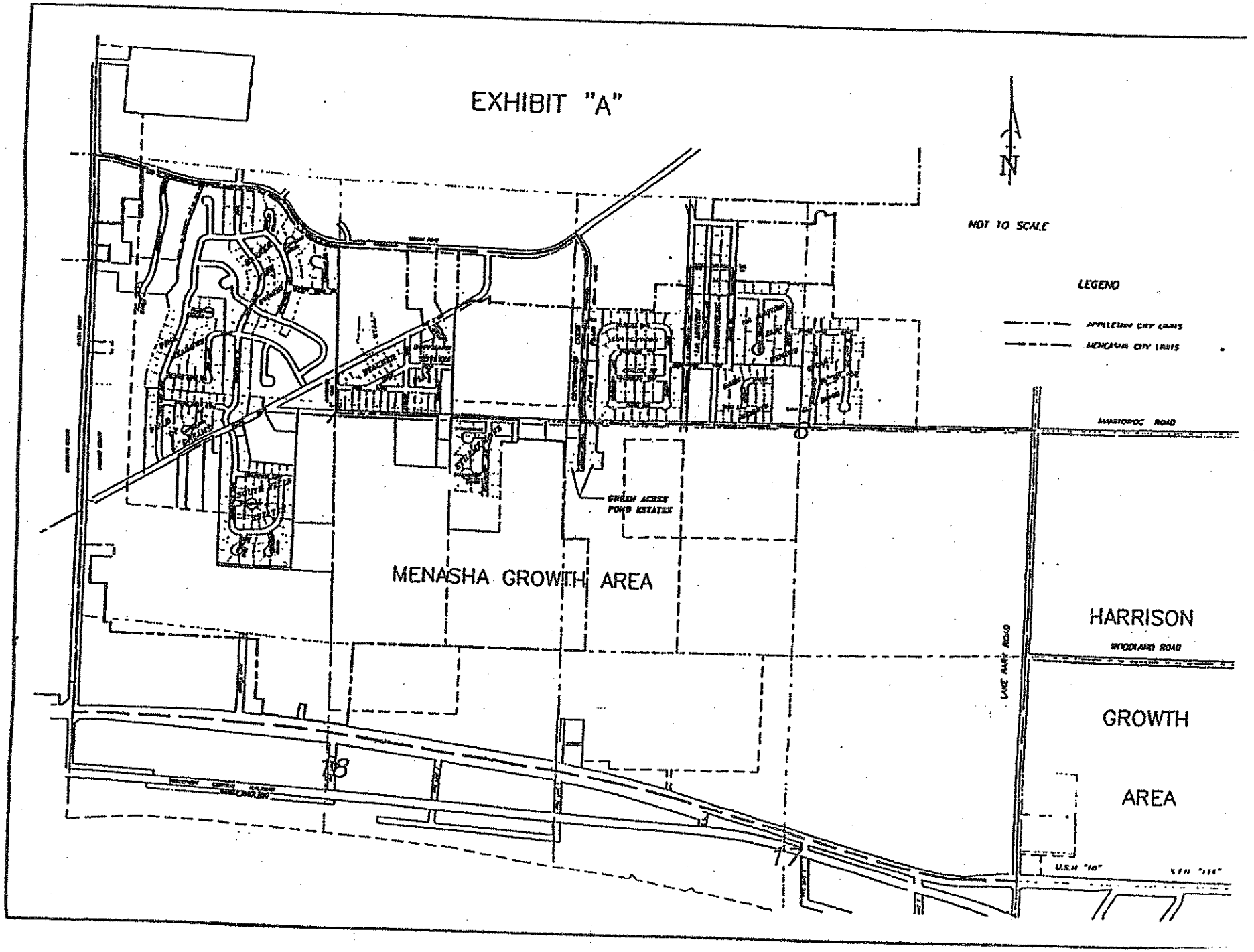
EXHIBIT "A"
N
NOT TO SCALE
LEGEND
APPLETON CITY LIMITS
MENASHA CITY LIMITS
MARSHFIELD ROAD
GRASS ACRES POND ESTATES
MENASHA GROWTH AREA
HARRISON
WOODLAND ROAD
LAKE PARK ROAD
GROWTH
AREA
U.S.H "10"
18
17

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 Lot5 of Block 2 of Stacker Plat, located in the Southwest ¼ of the Northeast1/4 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. Lang, 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: _____

AFFIDAVIT OF KARA HOMAN

KARA HOMAN, having been first duly sworn on oath deposes and states:

1. I am the Principal Planner for the City of Menasha.

2. I created EXHIBIT A: WAVERLY SANITARY DISTRICT PRE-VILLAGE OF HARRISON INCORPORATION using a geographic information system (GIS) software called ArcGIS with data pertaining to municipal boundaries and road centerlines acquired from Calumet County's Land Information Office and data pertaining to Waverly Sanitary District acquired from the East Central Wisconsin Regional Planning Commission. Within the maps, boundaries for incorporated municipalities (e.g. City of Appleton and City of Menasha) overlay Waverly Sanitary District service area boundaries to reflect that town sanitary districts do not extend into incorporated municipalities.

3. I created EXHIBIT B: WAVERLY SANITARY DISTRICT POST-VILLAGE OF HARRISON INCORPORATION using a geographic information system (GIS) software called ArcGIS with data pertaining to municipal boundaries and road centerlines acquired from Calumet County's Land Information Office and data pertaining to Waverly Sanitary District acquired from the East Central Wisconsin Regional Planning Commission. Within the maps, boundaries for incorporated municipalities (e.g. City of Appleton, City of Menasha and Village of Harrison) overlay Waverly Sanitary District service area boundaries to reflect that town sanitary districts do not extend into incorporated municipalities.

4. I created EXHIBIT C: WAVERLY SANITARY DISTRICT POST-INTERGOVERNMENTAL AGREEMENT BETWEEN VILLAGE AND TOWN OF HARRISON using a geographic information system (GIS) software called ArcGIS with data pertaining to municipal boundaries and road centerlines acquired from Calumet County's Land Information Office and data pertaining to Waverly Sanitary District acquired from the East Central Wisconsin Regional Planning Commission. Within the maps, boundaries for incorporated municipalities (e.g. City of Appleton, City of Menasha and Village of Harrison) overlay Waverly Sanitary District service area boundaries to reflect that town sanitary districts do not extend into incorporated municipalities.

Dated at Menasha, Wisconsin this 21st day of March, 2014.

Kara Homan

Kara Homan

STATE OF WISCONSIN)

(ss

WINNEBAGO COUNTY)

Personally came before me this 21st day of March, 2014 the above-named Kara Homan to me known to be the person who executed the foregoing instrument and acknowledge the same.

Notary Public

My commission IS PERMANENT.

AFFIDAVIT OF GREG KEIL

GREG KEIL, having been first duly sworn on oath deposes and states:

1. I am employed as the Community Development Director for the City of Menasha.

2. In response to my request via telephone, the Waverly Sanitary District emailed an excerpt from a Public Service Commission report attached as Exhibit G which lists the December 31, 2012 number of Waverly Sanitary District patrons. On that date there was a total of 1,968 patrons. Of this total 1,003 were within the Town of Harrison, 898 within the City of Menasha and 67 within the City of Appleton. The annotations on the report made by Waverly Sanitary District staff determined the number of patrons within the Village of Harrison after its partial incorporation and subsequent entrance into an intergovernmental agreement affixing the boundaries of the Village and Town to be 625.

3. A follow-up telephone inquiry was made with Cathy Girdley to determine the number of patrons in the Village of Harrison after March 13, 2013, but prior to entering into the intergovernmental agreement between the Town and the Village affixing boundaries. I was informed via a telephone conversation with Cathy Girdley that the number of patrons within the Village at that time was 240. On March 21, 2014 I confirmed that number via telephone conference with Cathy Girdley.

Dated at Menasha, Wisconsin this 21st day of March, 2014.

Greg Keil

STATE OF WISCONSIN)
(ss
WINNEBAGO COUNTY)

Personally came before me this 21st day of March, 2014 the above-named Greg Keil to me known to be the person who executed the foregoing instrument and acknowledge the same.

Notary Public
My commission IS PERMANENT.

EXHIBIT G

WATER CUSTOMERS SERVED

COPY

List the number of customer accounts in each municipality for which your utility provides retail general service. Do not include wholesale customers or fire protection accounts.

Location (a)	Customers End of Year (b)
Calumet County	
Cities	
APPLETON	67
MENASHA	898
Total Cities:	965
Towns	
HARRISON	1,003
Total Towns:	1,003
Total Calumet County:	1,968
Total Company:	1,968

1,003.00+
378.00-
625.00*

Village of Harrison

7/23/13

8.+
35.+
35.+
26.+
26.+
36.+
36.+
36.+
34.+
8.+
17.+
25.+
8.+
35.+
13.+
378.**

Total TOH West of LP

378.+
362.-
16.**

13 on Manitowoc
3 on Johann

Stacker Plat 54.+
Hoffmann Est 11.+
Green Acres Pond Est. 9.+
Berry Fields 26.+
Cotton Wood Creek 88.+
Haen Heights 72.+
1st Add Ashland Hollows 8.+
Cedar Ridge Est 42.+
2nd Add Cedar Ridge 52.+
362.** Within Subdivisions