

# The State of Wisconsin

Office of the Secretary of State

## **VILLAGE 17**

VILLAGE OF EAGLE

COUNTY OF WAUKESHA

LEGAL PROCEEDINGS

FILED DECEMBER 4, 2003

V-17

LAW OFFICES OF  
**HIPPENMEYER, REILLY, MOODIE & BLUM, S.C.**

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**RICHARD S. HIPPENMEYER**  
(1911 - 1979)  
OF COUNSEL  
**WILLIAM F. REILLY**

**ROBERT B. MOODIE**  
**MARK G. BLUM**  
**SHAWN N. REILLY**  
COURT COMMISSIONER  
**THOMAS G. SCHMITZER**

**LORI J. FABIAN**  
**MARK D. GUNDRUM**

December 2, 2003

Douglas LaFollette  
Wisconsin Secretary of State  
P.O. Box 7848  
Madison, WI 53707-7848

Dear Mr. LaFollette:

Pursuant to Wis. Stats. Sec. 66.0231, the Village of Eagle is providing notice to the Office of the Secretary of State that an annexation by the Village of Eagle has been contested by the instigation of legal proceedings. Enclosed please find a copy of the Amended Complaint of the Town of Eagle. Pursuant to Wis. Stats. Sec. 66.0231, I am providing four copies of this notice of the commencement of this action. I apologize for not providing notice earlier. I only recently became aware that Wis. Stats. Sec. 66.0231 requires that notice of this proceeding be filed with the Secretary of State.

Sincerely,

**HIPPENMEYER, REILLY, MOODIE & BLUM, S.C.**

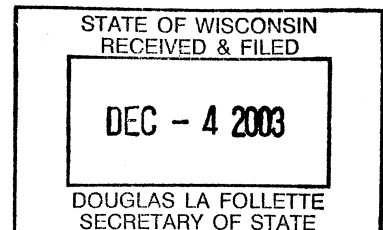


Shawn N. Reilly

SNR:sg

Enclosures

cc Shirley Mealy, Village Clerk



TOWN OF EAGLE,  
820 E. Main Street, Eagle WI 53119  
and  
STEVEN SORGE

S105 W37570 Estate Dr., Eagle WI 53119  
Plaintiffs,

v.

VILLAGE OF EAGLE,  
820 E. Main St., Eagle WI 53119  
Defendant..

THIS IS AN AUTHENTICATED COPY OF AN  
ORIGINAL DOCUMENT FILED IN THE CLERK  
OF COURTS OFFICE, WAUKESHA COUNTY

FEB 13 2003

CLERK OF CIRCUIT COURT

Case No. 02 CV 2954  
Declaratory and Injunctive Relief  
Case Code Classification 30701

SUMMONS – FIRST AMENDED COMPLAINT

STATE OF WISCONSIN

To each person named above as a Defendant:


You are hereby notified that the Plaintiffs named above have filed a lawsuit or other legal action against you. The First Amended Complaint, which is attached, states the nature and basis of the legal action.

You must respond to the First Amended Complaint within forty-five (45) days of receiving this Summons, except the U.S. of America, an officer or agency, must respond within 60 days, with a written answer, as that term is used in ch. 802 of the Wisconsin Statutes. The court may reject or disregard an answer that does not follow the requirements of the statutes. The answer must be sent of delivered to the court, whose address is **Clerk of Circuit Court, Waukesha County Courthouse, 515 W. Moreland Blvd., Waukesha WI 53188**, and to **Elizabeth Adelman**, Plaintiffs' attorney, whose address is **33725 County Road L, Mukwonago WI 53149**. You may have an attorney represent you.

If you do not provide a proper answer within forty-five (45) days, the court may grant judgment against you for the award of money or other legal action requested in the First Amended Complaint. A judgment may be enforced as provided by law. A judgment awarding money damages may become a lien against any real estate you own now or in the future, and may also be enforced by garnishment or seizure of property.

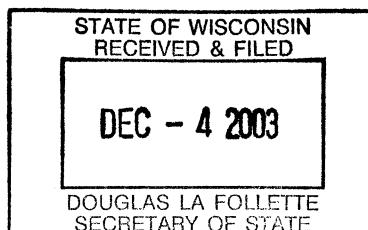
Dated this 12<sup>th</sup> day of February 2003.

Attorney for Plaintiffs



Elizabeth Adelman  
State Bar No. 1014258

33725 County Road L  
Mukwonago WI 53149  
262/662-0804



COPY

TOWN OF EAGLE and  
STEVEN SORGE,

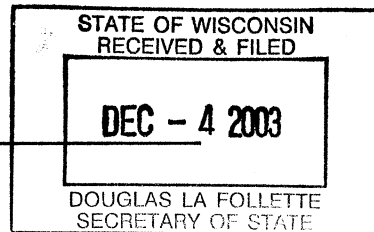
Plaintiffs

v

VILLAGE OF EAGLE,

Defendant.

CASE NO. 02 CV 2954  
Case Classification Injunction  
Code No.



FIRST AMENDED COMPLAINT

Plaintiffs Town of Eagle and Steven Sorge by Town Attorney Elizabeth  
Adelman allege as follows:

COUNT 1 ANNEXATION

1. The Town of Eagle is an unincorporated municipality with its office located in the Eagle Municipal Building, 820 E. Main Street, Eagle WI 53119;
2. The Village of Eagle is an incorporated municipality adjoining the Town of Eagle and also has its offices located in the Eagle Municipal Building, 820 E. Main Street, Eagle WI 53119;
3. During the late summer of 2002 the Village of Eagle purchased approximately 40 acres of land located in the Town of Eagle, not contiguous to the Village of Eagle and in excess of one mile away from the closest boundary of the Village of Eagle. The Village of Eagle purchased this land from Albert Gagliano (hereafter referred to as "the Gagliano land.")
4. The Village of Eagle purchased the Gagliano land for the purpose of locating one or more commercial, high capacity wells for providing water to the Village's water utility customers.
5. On October 22, 2002 the Village Board of Eagle enacted an ordinance pursuant to §66.0223 Stats., annexing 50 acres, more or less, of the Gagliano

land into the Village and removing it from the Town. The annexation became effective upon its filing with the Secretary of State on November 4, 2002.

Annexation Ordinance is attached to this First Amended Complaint as Attachment No.1, incorporated by reference.

6. Sec. 66.0223 Stats. authorizes annexation of land not contiguous to a village when “the use of the territory by the ... village is not contrary to any town or county zoning regulation.”

7. The Town of Eagle enacted zoning regulations governing the Town in 1990. The Town’s zoning code, map and master plan authorize the Gagliano land to be used solely for agricultural purposes (A-2 District).

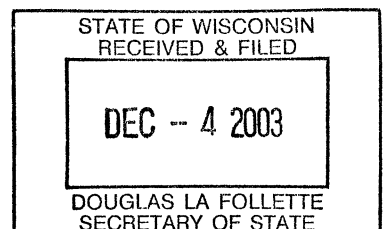
8. Use of the Gagliano land for commercial, high capacity well(s) is contrary to the Town of Eagle zoning regulations permitting solely agricultural uses. The Village acknowledges that an agricultural zone is contrary to its planned use of commercial, high capacity well(s) by the Village’s apparent proposal to rezone this land to install its well(s). Notice of Public Hearing for the Village’s first attempt to rezone and grant itself a conditional use permit is attached to this First Amended Complaint as Attachment No. 2 and is incorporated by reference. Apparent Notice of the Public Hearing for the Village’s second attempt to rezone this land is attached to this First Amended Complaint as Attachment No. 3

COUNT 2 – IMPROPER NOTICE FOR REZONE

9. Plaintiff realleges and incorporates by reference the allegations in paragraphs numbered 1 through 5.

10. Plaintiff Steven Sorge is a resident of the Town of Eagle, who owns property in and resides on land adjacent to the land identified above as the Gagliano land. He is injured by the defective notice of the public hearing to rezone property.

11. In January 2003 the Village published apparent notice of the public hearing to rezone some land for purposes of well installation, giving a false and misleading description of the land apparently proposed to be rezoned, as follows:



The Village of Eagle has rescheduled a public hearing for Thursday, January 23, 2003 beginning at 7:00 p.m. in the Municipal Building located at 820 E. Main Street for consideration of a rezoning request by the Village of Eagle of approximately 40 acres from A-2 (Limited Agriculture) to I-1 (Institutional) for construction of the new well(s). Said property is located on Hwy LO and Hwy 67S in the Town of Eagle.

12. The notice is defective because it misidentifies the land apparently proposed to be rezoned. Pursuant to the Village's annexation ordinance, filed with the Secretary of State on November 4, 2002, from and after November 4, 2002, the property which the Village apparently seeks to rezone is located in the Village of Eagle, not in the Town of Eagle. Alternatively, if the land which the Village seeks to rezone is located in the Town of Eagle, the Village lacks authority to rezone land located in the Town of Eagle, under the procedure used here.

WHEREFORE Plaintiffs respectfully request the Court:

- A. grant temporary and permanent injunctions requiring the Village of Eagle to reschedule and properly publish notice of its public hearing for rezoning the Gagliano land;
- B. grant a temporary injunction returning the Gagliano land to the jurisdiction of the Town of Eagle while this case is pending;
- C. grant a declaratory judgment holding that the annexation does not comply with §66.0223 Stats.; and
- D. For costs and for such other and further relief as are just.

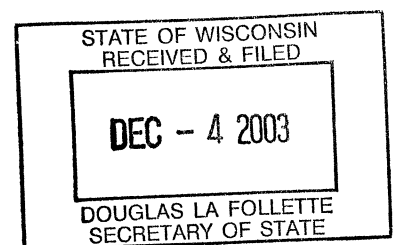
Dated this 11<sup>th</sup> day of February, 2003

TOWN OF EAGLE and STEVEN SORGE

by *Elizabeth Adelman*

Elizabeth Adelman  
State Bar No. 1014258

33725 County Road L  
Mukwonago WI 53149  
262/662-0804





**ORDINANCE NO. 174  
AN ORDINANCE TO ANNEX TERRITORY TO THE  
VILLAGE OF EAGLE, WISCONSIN**

The Village Board of the Village of Eagle, Wisconsin, do ordain as follows:

**SECTION I. TERRITORY ANNEXED.** Pursuant to sec. 66.0223 of the Wisconsin Statutes, the Village of Eagle, as the owner of property lying near but not contiguous to the Village may annex property to the Village. Therefore, the Village of Eagle, as owner of the property described below, previously located within the Town of Eagle, Waukesha County, Wisconsin is annexed to the Village of Eagle, Waukesha County, Wisconsin:

**PARCEL 1**

The North ¼ of the Northwest 1/4, and the Northwest 1/4 of the Northeast 1/4, all in Section 33, in Township 5 North, Range 17 East, in the Town of Eagle, Waukesha County, Wisconsin, except therefrom the following:

- A. All those land lying West of Betts Road.
- B. Certified Survey Map No. 6175, recorded as Document No. 1593781
- C. Certified Survey Map No. 6223, recorded as Document No. 1602672

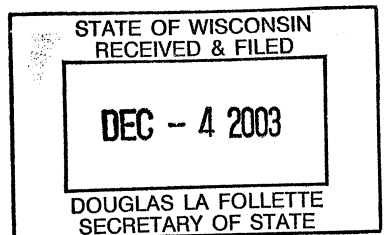
**PARCEL 2**

O.L. 2 of Certified Survey Map No. 6223, recorded July 16, 1990 and recorded in volume 51 of Certified Survey Maps on Pages 181, 182, and 183 inclusive as Document No. 1602672, being part of the Northeast 1/4 of the Northwest 1/4 of Section 33, Township 5 North, Range 17 East, Town of Eagle, Waukesha County.

**SECTION II. EFFECT OF ANNEXATION.** From and after the date of this ordinance the territory described in Section I shall be a part of the Village of Eagle for any and all purposes provided by law and all persons coming or residing within such territory shall be subject to all ordinances, rules and regulations governing the Village of Eagle.

**SECTION III. TEMPORARY ZONING CLASSIFICATION.** Pursuant to Village Code Section 9.0301, the territory annexed to the Village of Eagle is hereby zoned A-2, Limited Agricultural District. Within 6 months, the Village Planning Commission shall evaluate and recommend a permanent classification to the Village Board

**SECTION IV. ORDINANCE AND PLAT TO BE FILED WITH THE SECRETARY OF STATE.** Attached hereto is a plat showing the boundaries of the

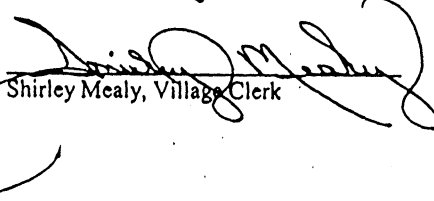


property. The Village Clerk is directed to file seven certified copies of this ordinance and plat with the office of the Secretary of State and to deliver, within 10 days thereafter, a certified copy of this ordinance to the Waukesha County Clerk. A copy of this ordinance shall also be mailed to the Clerk for the Town of Eagle, the Palmyra-Eagle School District, we energies and Centurytel.

**SECTION V. SEVERABILITY.** If any provision of this ordinance is invalid or unconstitutional, or if the application of this ordinance to any person or circumstances is invalid or unconstitutional, such invalidity or unconstitutionality shall not effect the other provisions or applications of this ordinance which can be given effect without the invalid or unconstitutional provision or application.

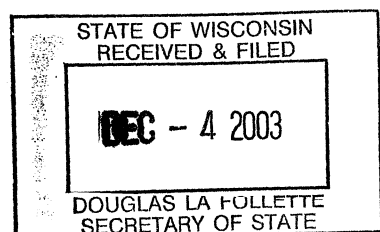
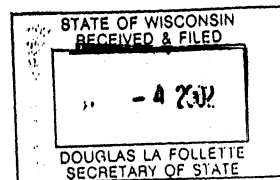
**SECTION VI. EFFECTIVE DATE.** This ordinance shall take effect upon passage as provided by law.

  
Lynn Greenberg, Village President

  
Shirley Mealy, Village Clerk

Dated this 22nd Day of October, 2002

Eagle file folder annexation ordinance





legals

of Chapters 1-6 and adult-entertainment ordinances were tabled until next board meeting.

c. Personnel & Finance - Additional hours for tax collection was granted. Rockteacher made motion with a seconded from Kussmann. Motion was made by Spielvogel to table salary resolution until further discussion by board regarding Human Resource Policy. Motion was seconded by B. Spurrell carried with Greenberg and Rockteacher being opposed.

f. Streets & Sidewalks - Issuance of building permits (Fox Chase) After review of Ruckert & Mielke and Russ Barry correspondence Rockteacher moved to not issue building permits until developers agreement is adhered to. R. Spurrell seconded motion carried with B. Spurrell abstaining.

g. Water Utility - Letters have been sent out regarding re-zoning. Rate increase has been approved by the PSC.

h. Fire District - Changes are being made on job descriptions and also some movement of administrative personnel is taking place.

i. Correspondence - President Greenberg shared a thank you from the Palmira/Faule Community Band for the Village's continued support. A letter from Jim Doyle to Hans Lux was also shared.

There being no other business, the meeting was adjourned at 9:45 p.m. on a Rockteacher, R. Spurrell motion.

Respectfully submitted, Kim Deegan Deputy Clerk Treasurer Jan. 8, c

VILLAGE OF EAGLE PUBLIC HEARING

TO WHOM IT MAY CONCERN: The Village of Eagle has rescheduled a public hearing for Thursday, January 23, 2003 beginning at 7 p.m. in the Municipal Building located at 820 E. Main Street for consideration of a rezoning request by the Village of Eagle of approximately 40 acres from A-2 (Limited Agriculture) to I-1 (Institutional) for construction of the new well (s). Said property is located on Hwy LO and Hwy 675 in the Town of Eagle.

All interested parties will be heard. Shirley Mealy, Village Clerk Jan. 8, 15, c

VILLAGE OF EAGLE PLANNING COMMISSION MEETING Thursday, January 23, 2003, Municipal Building, \*Following public hearing at 7 p.m. AGENDA

- 1. Call to Order/Open Meeting Law Requirements.
2. Roll Call
3. Recommendation to Village Board for the rezoning of approx. 40 acres located at Hwy LO and Hwy 675 from A-2 (Limited Agriculture) to I-1 (Institutional)
4. A adjournment.

VILLAGE OF EAGLE SPECIAL BOARD MEETING Thursday, January 23, 2003, Municipal Building, \*\*Following Special Planning Commission Meeting AGENDA

- 1. Call to Order/Open Meeting Law Requirements.
2. Roll Call
3. Consideration of recommendation from Planning Commission for the rezoning of approx. 40 acres located at Hwy LO and Hwy 675 from A-2 (Limited Agriculture) to I-1 (Institutional).
4. Adjournment.

Jan. 8, 15, c

TOWN OF EAGLE REGULAR TOWN BOARD MEETING DECEMBER 18, 2002 UNAPPROVED MINUTES

Chairman Wilton called the meeting to order at 8:03 p.m. and led the Pledge of Allegiance. Present: Wilton, Burton, Malek, Orchard and Kwiatkowski. Also present: Atty. Adelman, Treasurer Pasternski, Clerk McMillan.

Minutes- Motion by Kwiatkowski, seconded by Orchard to accept the minutes from November 20, 2002 as submitted. Motion carried.

Clerk's Report- A report from WCTC including financial figures

discussion/approval of an appointed clerk's position, was removed from the agenda.

Treasurer's Report- Mr. Pasternski reported November receivables were \$76,920.82. Total held in all accounts as of 11/30/02 was \$528,724.28. Motions by Orchard, seconded by Malek to accept the treasurer's report as presented. Motion carried.

Claims- Claims totaling \$79,525.47 were reviewed. Motion by Kwiatkowski, seconded by Malek to approve payment of the claims. Motion carried.

Kienast: Property Tax Relief- Mr. Wilton explained that the Kienast's property tax bill included taxes on the home, however it should have been on land only (plus 2003 garbage/recycling fee), because the lot was vacant on January 1, 2002. Motion by Kwiatkowski, seconded by Burton to approve the adjustment to the property tax bill. Motion carried. The assessor will send a letter to the treasurer Mr. Pasternski will calculate the correct amount and follow up with the property owners.

Library- Barb Jateczak was present and gave recommendations for Library Board appointments. Motion by Burton, seconded by Orchard to reappoint Tom Bennett and Robert Anderson to the Library Board to serve until 12/31/05. Motion carried. FABLE will hold an open house at the library on February 3, 2003 from 1-3 p.m. Options are being studied for a shared County automation system.

Lake Management - Tom Day reported that an informational meeting was held on December 11. A PowerPoint presentation will be soon available on the town website. No bids are in for the dry hydrant yet. As of April 1, 2003, bass of 14-18" will be a protected size. A dredging/drawdown discussion will be held at a special meeting on January 22 at 7:30 p.m. at the municipal building.

Fire Commission- Mr. Wilton explained that there was a miscommunication between the Town and Village boards regarding the Fire Department's budget. He asked that the board approve an accounting shift to correspond with the village's final budget. This will allow for a 3.5% pay raise for the Fire Department's full-time employee, John Putnam. This increase should be offset by a reduction in cost to the department for health insurance because of a policy change, which now requires employee co-payments. The full budget amount as previously approved by the Town will remain the same. Motion by Burton, seconded by Malek to go along with the budget change. Motion carried. Discussion followed regarding the authority of approval of the Fire Department's budget. It was clarified that the Fire Commission does not have final approval.

Park & Rec- Don Malek distributed copies of the Park & Rec 2002 budget to date. The Town will take over accounting/bookkeeping in January 2003. A balance of approximately \$4670, not including money earned through fundraisers, should remain at the end of 2002. A program booklet is being prepared for mailing to residents. The trailer that was donated for concessions was found to be in need of repairs to bring it up to code. Expenses for repair were found to be too high to be cost-effective. Discussion followed regarding the possible installation of a counter and window in the park's garage. Mr. Malek will bring further information regarding costs to the next Town Board meeting.

Business Park- Letters from several property owners regarding plans for compliance with recent inspections were reviewed. Discussion followed regarding possible issues for the newly formed Business Park committee to address in addition to outside storage such as landscaping, screening and berms. Atty. Adelman suggested referring to the Business Park Regulations document as a condition of approval for new Plans of Operations. Motion by Kwiatkowski, seconded by Orchard to have the Business Park properties re-inspected. Motion carried. Mr. Malek will contact the inspecting inspector. Motion by Kwiatkowski, seconded by Orchard to dismiss the citation Rob Chapman. Motion carried.

Roads- Atty. Adelman research statutes and local ordinances regarding doing work that entails digging on town property. The Town has an ordinance that is outdated. A new ordinance will be presented for approval next month. Garbage/Recycling- Mr. Kwiatkowski

by Malek, seconded by Burton to have the attorney address the problem. Motion carried. A special meeting will be held on January 13 at 8 p.m. to review the CU's currently on file.

Bartender's License Applications- Three operator's (bartender's) license applications were reviewed. Motion by Burton, seconded by Malek to grant the licenses for Kristina Rahn and Jenny Szymkowski from the Brookwood Inn. Motion carried. Motion by Orchard, seconded by Burton to grant the license for Robert Wennesheimer from Eagle Springs Golf Resort pending receipt of clear background check. Motion carried.

Election Inspectors- The following recommendations were made for appointment of election inspectors & alternates: Betty Eckstein, Trudy Rupp, Fern Wambold, Margo Morner, Nada Moeller, Nancy Burton, Pat Wilton, Cheryl Gunkel, Barbara Ribbish and Jessica Chamberlain. Motion by Kwiatkowski, seconded by Malek to appoint the election inspectors as presented. Motion carried.

Humane Society Agreement- The revised Humane Society agreement for services was reviewed. Motion by Kwiatkowski, seconded by Burton to approve the amended HAWS agreement. Motion carried.

Village Well Update- Mr. Wilton explained the Village's public hearing for a rezone and conditional use on the municipal well property was postponed. It is now anticipated that the water from the new well will be blended with existing well(s). Tom Day stated that the wells in the area are apparently being monitored for a baseline water level.

Joint Municipal Court Agreement & Ordinance- An ordinance adopting the Village of North Prairie's ordinance to allow the Town of Waukesha to join the Joint Municipal Court was presented for approval. Motion by Burton, seconded by Malek to approve the ordinance. Motion carried. The related agreement for operation of the municipal court with the addition of the Town of Waukesha was also presented for approval. Motion by Kwiatkowski, seconded by Malek to adopt the joint court agreement. Motion carried.

Attorney's Report- Atty. Adelman gave an update on the court proceedings regarding the zoning code violations at the Slightz property. A letter was received from the cemetery sexton regarding increasing fees for cemetery plots. The issue will be on the agenda next month for approval.

Chairman's Report- No report. Motion by Burton, seconded by Malek to adjourn at 9:30 p.m. Motion carried. Sally McMillan, Town Clerk Jan. 8, c

TOWN OF EAGLE Planning & Zoning Commission Meeting Held Jointly with the Town Board December 2, 2002 UNAPPROVED MINUTES

Mr. Wilton called the meeting to order at 8:00 p.m. and led the Pledge of Allegiance. Present: Wilton, Burton, Malek, Orchard, Kwiatkowski, Pasternski, Samuels, Rudy. Absent: Morner. Also present: Town Planner Tom DeLacy, Clerk McMillan.

Minutes- Motion by Burton, seconded by Samuels to accept the minutes from November 11, 2002 as written. Motion carried.

ZT02-03 Rezone Reconsideration: Strong, Shearer Road- Motion by Pasternski, seconded by Samuels to reconsider the rezoning of the Strong property. Motion carried. Mr. Wilton explained the Strong's were in last month to request approval to rezone approximately 35 acres from A-P (Agricultural Land Preservation) to A-2 (Rural Home) District to allow for a division of the property into four lots for single-family homes. That rezone was denied, however the applicants were asked to consider rezoning to the RH (Residential Holding) District, which would require the lots to be a minimum of five

one of the 3-acre lots, however the zoning through potential future rezoning would be consistent. Motion by B P & Z to give co with a three-a Jericho Corner section. The board's plan to be maps showed the creek on the must also continue carried by Orchard of the recommendation approval to the Stouff, CTH

Humane Society Agreement- The revised Humane Society agreement for services was reviewed. Motion by Kwiatkowski, seconded by Burton to approve the amended HAWS agreement. Motion carried.

Review- Jeff N to allow for a party into two with existing parcel, which followed regular as offset and Rudy, second conceptual at Kwiatkowski, board to accept Z and give co

Condition- that he has a Discussion longer in use meeting was January 13, 2 files and estu ed for a he

Wilton, W Wilton step request app parcels, each (east) and H onded by Rudy subject other neces Wilton abs onded by O the recoma with those Wilton absta Business I Regulations inspections given at the Motion to adjourn at 9

STATE OF WISCONSIN RECEIVED & FILED DEC - 4 2003 DOUGLAS LA FOLLETTE SECRETARY OF STATE

ATTACHMENT # 3