

STATE OF WISCONSIN

CIRCUIT COURT

JEFFERSON COUNTY

TOWN OF KOSHKONONG,

Plaintiff,

vs.

CITY OF FORT ATKINSON,

Defendant.

Case No. 98-CV-295
Other Real Estate: 30405

STIPULATION RE: MUNICIPAL BOUNDARIES

IT IS HEREBY STIPULATED AND AGREED TO by and between the above named Plaintiff, Town of Koshkonong (the "Town"), by its attorneys Axley Brynelson, LLP, by Timothy D. Fenner, and the above named Defendant, City of Fort Atkinson (the "City") by its attorneys Michael Best & Friedrich LLP, by William F. White and by Christopher J. Rogers, City Attorney, as follows:

WITNESSETH:

WHEREAS, the Town has commenced the instant action for the purpose of obtaining a declaration that City of Fort Atkinson Ordinance No. 526 annexing certain lands from the Town to the City, be declared invalid and void; and

WHEREAS, the Town and the City have engaged in negotiations relative to the settlement of the issues raised as a result of the instant action; and

WHEREAS, Section 66.027, Stats., authorizes the City and Town to enter into a written stipulation, compromising and settling this litigation and determining the common boundary line between the City and Town; and

WHEREAS, Section 66.027, Stats., authorizes the Circuit Court to enter a Final Judgment incorporating the provisions of such stipulation and fixing the common boundary line between the Town and the City.

NOW, THEREFORE, for and in consideration of the mutual covenants contained herein, as well as other good and valuable consideration moving from each party to the other, it is hereby agreed as follows:

1. Recitals. The recitals hereto are hereby incorporated by reference.

2. Authorization. By executing this Stipulation, the Town and the City each represent and warrant unto the other that this Stipulation has been approved by the governing bodies of the Town and City, respectively; and that the individuals executing this Stipulation on behalf of the Town and City, respectively, are duly authorized to do so.

3. Judgment. The Court may direct, without notice or hearing, that a judgment embodying the terms and provisions of the Stipulation be entered, which judgment shall be in the form and substance of that attached hereto.

4. Term. The term of this Stipulation shall be for a period of ten (10) years, commencing on the date of entry of a judgment embodying the terms and provisions hereof, unless said term is extended, modified or otherwise shortened as provided for herein.

5. City Ordinance No. 526. The Town and City agree that the City of Fort Atkinson Ordinance No. 526 annexing the real estate described therein from the Town to the City is valid in accordance with its terms.

6. Limited Boundaries. During the term of this Stipulation, the Town and City agree that the following "boundaries" are hereby established. The boundaries so established may or may not represent existing corporate boundaries of the City. The boundaries so established are not intended to establish actual corporate boundaries. Rather, the boundaries set forth herein are for the purposes of establishing "areas" whereby the City may annex additional lands within the Town, without opposition by the Town; and alternatively, whereby the City agrees not to annex lands within the Town, during the term of this Stipulation. Accordingly, the parties specifically agree as follows:

(a) Area A - City Growth Area. Subsequent hereto, the City may annex lands in the Town which lands are located in parts of Sections 9, 17, 16, 20, and 21, T5N, R14E, in the Town of Koshkonong, Jefferson County, Wisconsin, and which lands are located and bounded by public rights-of-way as follows: (i) lands identified on the attached map in Section 9 which are colored "Green" on the attached map and which are north of Hackbarth Road and west of Main Street; (ii) lands identified on the attached map in Sections 16 and 17 which are colored "Green" on the attached map and which are south of Hackbarth Road, east of

U.S. Business Highway 26, north of Finches Lane, West of Poeppel Road, excluding the lands described in Exhibit B which are colored in "Red" on the attached map; and (iii) after a period five (5) years from the date of this Stipulation, lands identified on the attached map in Sections 20 and 21 which are colored in "Yellow" on the attached map and are south of Finches Lane, east of Groeller Road, north of Star School Road and west of Poeppel Road; provided, however, that for lands identified in this subsection (iii) the City shall determine in its sole and reasonable discretion whether development shall occur in such area in advance of said five (5) year period. The City's determination shall be based on whether it has a demonstrable present or future need for such property, whether annexation is necessary for the orderly and efficient extension of sewer and water services into such lands, and whether development is imminent in such lands. Expansion into the area identified in subsection (iii) may occur after notice to the Town. These areas are collectively designated as "Area A" on the map attached hereto and incorporated herein, and are colored "Green" and "Yellow" on the attached map. The Town agrees to not directly or indirectly oppose any annexation of Area A by commencing an action under Section 66.029, Stats., or otherwise challenge the validity of any annexation ordinance associated therewith or to sponsor financially any such challenge or to voice any other opposition.

(b) Area B - No Annexation Area. Subsequent hereto, the City agrees not to approve annexation of any lands located in

the Town which lands are located and bounded as follows: the lands which are south of Hackbarth Road, west of U.S. Highway 12, north of Star School Road, east of Poeppel Road and including the area described in Exhibit B, in parts of Sections 14, 15, 16, 21, 22 and 23, T5N, R14E, Town of Koshkonong, Jefferson County, Wisconsin which are colored in "Red" and "Blue" on the attached map. This area is designated as Area B on the map attached hereto and incorporated herein. The City agrees to not, directly or indirectly, support or promote any annexation of Area B or to sponsor financially any such annexation or to voice any support thereof.

7. Town Roads.

(a) Poeppel Road. As of the execution hereof, that portion of Poeppel Road located south of its intersection with Hackbarth Road in Section 16, T5N, R14E, Jefferson County, Wisconsin is a town road. The City and the Town agree that during the term of this Stipulation, said portion of Poeppel Road shall remain a town road. In that regard, the Town shall have the responsibility for repair, replacement, maintenance, snow plowing and other responsibilities associated therewith and the City shall have no responsibility therefor. The City is actively engaged in developing a portion of the real estate located in Area A as an industrial/commercial park. During the term of this Stipulation the City agrees that no industrial, commercial or business development of any of the said lands located within Area A shall have direct access onto Poeppel Road within the Town except for

emergency or public safety purposes. All access to and from Area A shall be through existing and planned roadways through said Areas that funnel industrial/commercial/business traffic in a northwesterly direction, which roadways do not connect directly to Poeppel Road. Notwithstanding the foregoing, however, certain residential development may have direct access to Poeppel Road. Only residential developments as contemplated in the City's "Twenty Year Land Use Plan" (the "City's Plan") prepared by the Discovery Group and duly adopted on September 23, 1997, by the Common Council of the City, may have such direct access. Under no circumstances shall vehicular traffic to and from the commercial, industrial business park as contemplated by the City and as reflected in the City's Plan, be allowed to enter or exit Poeppel Road, except for emergency or public safety purposes. In addition, the Town grants the City permission to install a 16-inch water main within the public right-of-way for Poeppel Road from Hackbarth Road to Star School Road in accordance with standard Town procedures for installing such utilities.

(b) Hackbarth Road. Except for those portions of Hackbarth Road currently located within the City as of the date hereof, that portion of Hackbarth Road located in Sections 15 and 16, T5N, R14E, Jefferson County, Wisconsin, shall remain a town road during the term of this Stipulation. In that regard, the Town shall have the responsibility for repair, replacement, maintenance, snow plowing and other responsibilities associated therewith. The City shall have no responsibility therefor, except

for those portions of the said road currently located within the City.

(c) Highland Avenue. The City or a developer designated by the City may develop Highland Avenue as a regional collector street as shown on the City Plan. The Town waives any objection to such development of Highland Avenue or condemnation of right-of-way for such construction whether or not such lands are then in the City. Highland Avenue will be built by the City or a developer designated by the City to City standards including stormwater management improvements. When and if property owners who abut Highland Avenue annex their property to the City, and the City installs the public road and utilities, the property owners will be assessed for the costs of such improvements.

(d) Subsequent Improvement of Roads. In the event the Town or City should, subsequent to the date hereof and during the term of this Stipulation, determine to improve Poeppel Road and/or Hackbarth Road, and to recover the cost thereof, either whole or in part, from the properties abutting the same, then in such event, the Town or City may elect to specially assess all or any portion of such cost of improvement pursuant to the provisions of Section 66.60, Stats. The Town and City agree that any property located in the City or Town which abuts Poeppel Road or Hackbarth Road shall be assessed in the same manner and with the same methodologies as the Town or City assesses properties located within the Town or City for such improvements. In such event, the City and Town agree to authorize such assessment pursuant to the

provisions of Section 66.65(1), Stats., and to assist the Town or City in the collection of any such special assessments against the abutting property benefited thereby. Nothing contained herein shall prevent or preclude any affected property owner in the City or Town from contesting the validity of any such assessment pursuant to the provisions of Section 66.60, Stats.

8. Surface Water Drainage. In the event the City annexes any of the lands located in Area A, the City agrees that any surface water drainage plan relative to the development thereof, shall be submitted to the Town and its registered professional engineers for review and comment prior to the City's approval and implementation thereof. Failure of the Town to respond to the City within twenty-one (21) days from date of submission to the Town will constitute approval by default. The City agrees to modify any such surface water drainage plan to accommodate any reasonable request of the Town, it being the intent of the parties that all surface water drainage occur in the natural drainage areas presently existing, with the flow of surface water being to the north and the northwest. Under no circumstances shall the natural flow of surface water be directed from the existing drainage areas without the Town's consent, which shall not be unreasonably withheld. The Town agrees to submit to the City its drainage plans for development in Area B. Failure of the City to respond to the Town within twenty-one (21) days from the date of submission to the City will constitute approval by default. For purposes of this Paragraph 8, the term "development" means a

land division resulting in a "subdivision" within the meaning of Wis. Stats. § 236.02(12) Stats.

9. Access to Poeppel Road, Hackbarth Road and Groeller Road. In the event development occurs in Area A or B, and such development requires access to Hackbarth Road and/or Groeller Road and/or Poeppel Road, then in such event, the City and Town agree to limit access as set forth in the City Plan in such a manner so that multiple points of access are avoided, to the extent reasonably possible. The City and Town will jointly meet, upon the invitation of either party, for the purpose of discussing an increase in such access points.

10. Wetland Preservation. In connection with any development of the lands located in Areas A and B, the City and Town shall take all reasonable steps and precautions to preserve and maintain the areas located therein that have been designated as of this date a "wetlands" by the Wisconsin Department of Natural Resources and the U.S. Army Corps of Engineers.

11. Extraterritorial Land Division Review. The City will exercise its extraterritorial land division review authority within the Town in conformity with the City's subdivision ordinance and the provisions of the Wisconsin Statutes.

12. Joint Cooperation. The City and Town will jointly assist each other in causing Jefferson County to clean up the property currently owned by Robert Klement in Section 17 of the Town.

Dated this 3rd day of June, 1999.

TOWN OF KOSHKONONG

Paul O. Swart
Paul O. Swart
Chairman

Attest: Judith Almquist
Judy Almquist, Clerk

APPROVED AS TO FORM:

CITY OF FORT ATKINSON

John Wilmet
John Wilmet
City Manager

Attest: Faith A. Elford
Faith Elford, Clerk

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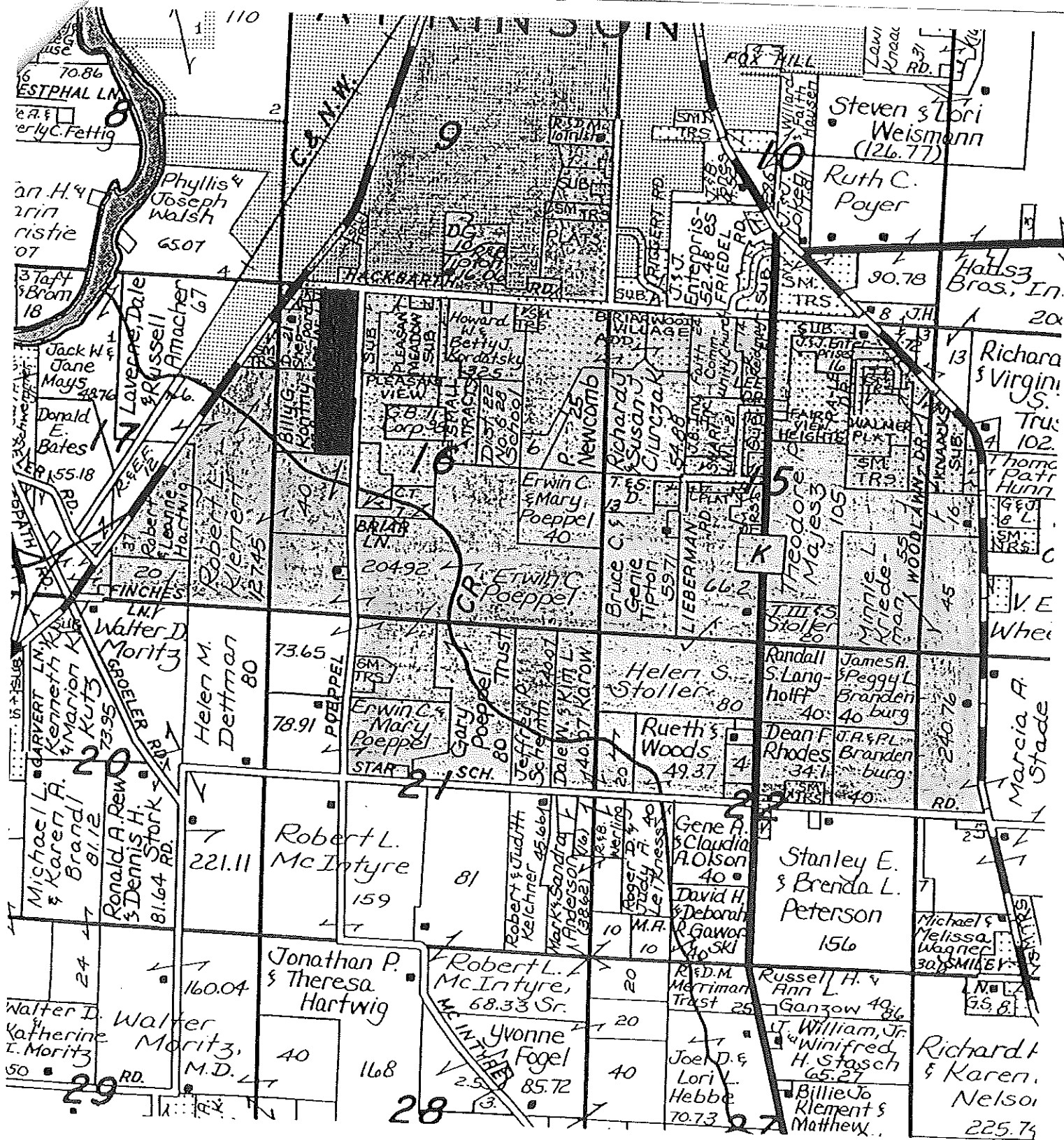


EXHIBIT B

Area to be included with area the City will not allow annexation of:

The area in Section 16 bounded by Hackbarth Road on the North; Poeppel Road on the East; the E-W $\frac{1}{4}$ line of Section 16 on the South; and the following line on the West:

Beginning in the northwest corner of Lot 26 of First Addition to Vosburg Heights Subdivision, NW $\frac{1}{4}$ of NW $\frac{1}{4}$ of Section 16, T5N, R14E, Town of Koshkonong, Jefferson County, Wisconsin; thence S2°48'E, 645.0 feet; thence S89°55'38"W, 62.83 feet; thence S2°48'E to the intersection of said line with the E-W $\frac{1}{4}$ line of Section 16.