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(FORM UPDATED: 08/11/2010)

WISCONSIN STATE LEGISLATURE ... PUBLIC HEARING - COMMITTEE RECORDS

2011-12

(session year)

Assembly

(Assembly, Senate or Joint)

Committee on Rural Economic Development and Rural Affairs...

COMMITTEE NOTICES ...

- Committee Reports ... **CR**
- Executive Sessions ... **ES**
- Public Hearings ... **PH**

INFORMATION COLLECTED BY COMMITTEE FOR AND AGAINST PROPOSAL

- Appointments ... **Appt** (w/Record of Comm. Proceedings)
- Clearinghouse Rules ... **CRule** (w/Record of Comm. Proceedings)
- Hearing Records ... bills and resolutions (w/Record of Comm. Proceedings)
(**ab** = Assembly Bill) (ar = Assembly Resolution) (**ajr** = Assembly Joint Resolution)
(**sb** = Senate Bill) (**sr** = Senate Resolution) (**sjr** = Senate Joint Resolution)
- Miscellaneous ... **Misc**

Assembly

Record of Committee Proceedings

Committee on Rural Economic Development and Rural Affairs

Assembly Bill 394

Relating to: voiding the annexation of territory in the town of Harrison in Calumet County by the city of Kaukauna.

By Representative A. Ott; cosponsored by Senator Lasee.

November 23, 2011 Referred to Committee on Rural Economic Development and Rural Affairs.

February 8, 2012 **PUBLIC HEARING HELD**

Present: (14) Representatives A. Ott, Steineke, Petrowski, Murtha, Tauchen, Ripp, Krug, T. Larson, Rivard, Danou, Vruwink, Jorgensen, Radcliffe and Doyle.

Absent: (0) None.

Excused: (1) Representative Ringhand.

Appearances For

- Al Ott — Representative, 3rd Assembly District
- Joseph Sprangers, Menasha — Town of Harrison (Calumet County)
- Travis Parish — Town of Harrison (Calumet County)
- John Slotten, Menasha — Town of Harrison (Calumet County)

Appearances Against

- Paul Van Berkel — City of Kaukauna
- John Van Treeck, Kaukauna
- Curt Witynski — League of Wisconsin Municipalities

Appearances for Information Only

- Erich Schmidtke — Wisconsin Department of Administration
- Renee Powers — Wisconsin Department of Administration

Registrations For

- Frank Lasee — Senator, 1st Senate District
- Ann Jablonski — Wisconsin Towns Association
- Jolene Plautz — Wisconsin Towns Association

Registrations Against

- Brad Boycks, Madison — Wisconsin Builders Association

- E. Joe Murray, Madison — Wisconsin Realtors Association

Registrations for Information Only

- None.

February 22, 2012 **EXECUTIVE SESSION HELD**

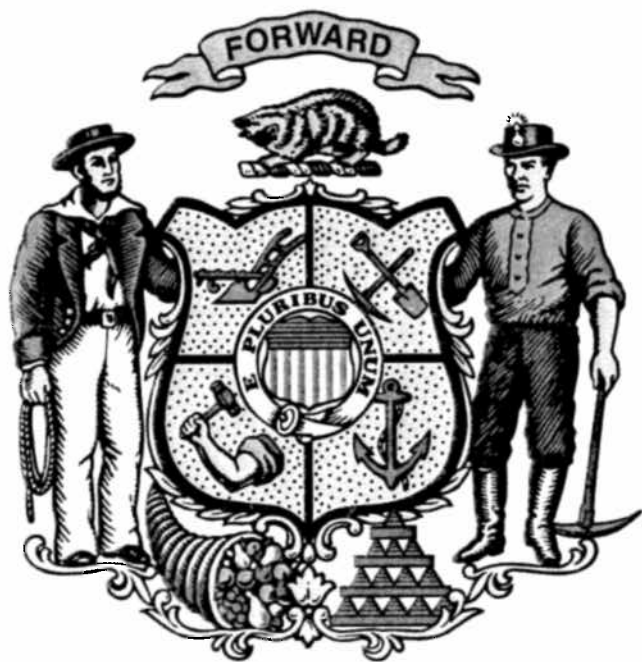
Present: (15) Representatives A. Ott, Steineke, Petrowski,
Murtha, Tauchen, Ripp, Krug, T. Larson,
Rivard, Danou, Vruwink, Jorgensen, Radcliffe,
Ringhand and Doyle.

Absent: (0) None.

Excused: (0) None.

March 15, 2012 Failed to pass pursuant to Senate Joint Resolution 1.

Erin Ruby
Committee Clerk



OCT 18 2010



WISCONSIN DEPARTMENT OF
ADMINISTRATION

JIM DOYLE
GOVERNOR
DANIEL J. SCHOOFF
SECRETARY

Municipal Boundary Review
PO Box 1645, Madison WI 53701
Voice (608) 264-6102 Fax (608) 264-6104
Email: wimunicipalboundaryreview@wi.gov
Web: <http://doa.wi.gov/municipalboundaryreview/>

October 15, 2010

PETITION FILE NO. 13500

SUSAN J. DUDA, CLERK
CITY OF KAUKAUNA
PO BOX 890
KAUKAUNA, WI 54130

PENNY WEIR, CLERK
TOWN OF HARRISON
W5298 STATE HWY 114
MENASHA, WI 54952

Subject: VAN TREECK ANNEXATION – Revised letter

This letter revises the Department's previous public interest review letter sent October 7, 2010. In that letter the Department found the proposed Van Treeck annexation to be against the public interest because it created a town island of Lot 3, CSM 1555 in the Town of Buchanan, contrary to s. 66.0221 Wis. Stats. and *Wagner Mobile v. City of Madison*¹. Staff from the City of Kaukauna has subsequently brought to the Department's attention the fact that a 1-foot strip of territory was excluded from the proposed annexation in order to avoid creating the town island.

The Department is aware that the 1-foot strip of excluded territory does connect the two towns and a town island is not created, at least in a technical or legal sense. However, the Department continues to find this annexation to be *against* the public interest because it is contrary to the spirit and intent of statute and caselaw. Section 66.0217 Wis. Stats. requires that territory be contiguous to, and homogenous with, to the annexing municipality. The Supreme Court has consistently held that gerrymandered or crazy-quilt boundaries are not consistent with the intent of the annexation statute. See *Mt. Pleasant v. Racine*² and *Town of Fond du Lac v. City of Fond du Lac*.³ Excluding a 1-foot strip may avoid creating a town island legally or technically, however, it would certainly create a town island functionally. The excluded strip does not demonstrate homogeneity of the annexation territory with Kaukauna. The strip would create substantial administrative difficulties for the Town of Harrison and City of Kaukauna, and also area residents, businesses, and service providers who likely would have no idea that it exists.

In order to avoid creating a town island, and avoid the need for a 1-foot strip, Petitioners may want to utilize s. 66.0217(3) Wis. Stats. which authorizes one-half approval annexations. A one-half approval annexation may enable the City to also include Lot 3, CSM 1555 in the Town of Buchanan in the annexation in order to result in a boundary line that is rational, compact and homogenous.

Also, the Department again notes that s. 66.0217(14)(b) Wis. Stats. prohibits municipalities from annexing into a new county unless both the new town and county approve of the annexation by resolution. This means that Kaukauna may only adopt an annexation ordinance if the Town of Harrison and Calumet County adopt resolutions approving of the annexation.

If the City of Kaukauna insists on adopting an ordinance accepting this annexation, the Department reminds of the requirements of s. 66.0217 (9)(a), Wis. Stats., which states:

"The clerk of a city or village which has annexed shall file immediately with the secretary of state a certified copy of the ordinance, certificate and plat, and shall send one copy to each company that

¹ *Wagner Mobile v. City of Madison*, 190 Wis. 2d 585 (1995).

² *Mt. Pleasant v. Racine*, 24 Wis.(2d) 41 (1964). *Town of Fond du Lac v. City of Fond du Lac*, 22 Wis.(2d) 533 (1964).

³ *Town of Fond du Lac v. City of Fond du Lac*, 22 Wis.(2d) 533 (1964).

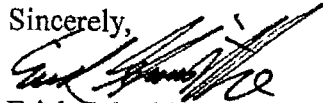
provides any utility service in the area that is annexed. The clerk shall record the ordinance with the register of deeds and file a signed copy of the ordinance with the clerk of any affected school district..."

State and federal aids based on population and equalized value may be significantly affected through failure to file with the Secretary of State. Please file a copy of your annexing ordinance, including a statement certifying the population of the annexed territory. **Please also include the MBR number with your ordinance as this assists with record keeping. Your MBR number is: 13500**
The address of the Office of the Secretary of State is:

Annexations and Railroads
Division of Government Records
Office of the Secretary of State
PO Box 7848
Madison WI 53707-7848

Please call me at (608) 264-6102, should you have any questions concerning this revised annexation review letter.

Sincerely,

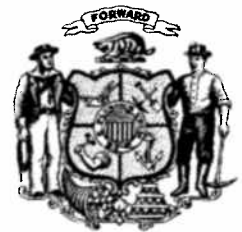


Erich Schmidtke, Municipal Boundary Review

cc: Petitioner
Town of Buchanan Clerk
Attorney Perry Pierre, Petitioner's representative
Attorney Andrew Rossmeissl, Town of Harrison

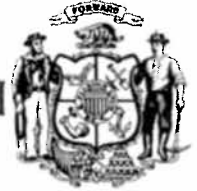


WISCONSIN STATE LEGISLATURE





Frank Lasee
WISCONSIN STATE SENATOR
FIRST SENATE DISTRICT



Senate Bill 333/Assembly Bill 394
Legal Standing for Towns in Certain Annexations
Senate Committee on Financial Institutions & Rural Affairs
Assembly Committee on Rural Economic Development and Rural Affairs
February 8, 2011

In 2003, Wisconsin Act 317 enacted a prohibition for townships to take legal action to contest the validity of annexations under the direct annexation by unanimous approval statute. This left an unintended loophole in statute which left no legal enforcement mechanism to stop illegal annexations. A few cities and villages have discovered this loophole and performed illegal annexations knowing that there was no recourse and the illegal annexation would go unchallenged.

The purpose of SB-333/ AB-394 is to invalidate an annexation that violates the state's annexation law by annexing by annexing across county lines enacted by the City of Kaukauna against the township of Harrison.

Given the prohibition of towns to challenge these annexations in court, there were no means by which to enforce the current annexation law whereby cities and villages are able to engage in illegal annexations. The only way to enforce this annexation law is to reverse this illegal annexation by legislation.

Please support our effort to rectify this illegal annexation.

Frank Lasee
Wisconsin State Senator
First Senate District





Al Ott

State Representative • 3rd Assembly District

Assembly Bill 394/Senate Bill 333

**Voiding the Annexation of Territory in the Town of Harrison by the City of
Kaukauna**

Assembly Committee on Rural Economic Development & Rural Affairs

Senate Committee on Financial Institutions & Rural Affairs

February 8, 2012

Assembly Bill 394 (AB 394) and Senate Bill 333 (SB 333) voids the annexation of property within the Town of Harrison by the City of Kaukauna. The bills cite non-compliance with state law as the reason to invalidate this annexation.

By way of background, on October 19, 2010, the Kaukauna City Council adopted an ordinance to annex an eight-acre parcel in the Calumet County Town of Harrison. This annexation, however, violates state law.

Section 66.0217 (14) (b) of the Wisconsin State Statutes specifies that:

“No territory may be annexed by a city or village under this section if no part of the city or village is located in the same county as the territory that is subject to the proposed annexation unless all of the following occur:

- 1. The town board adopts a resolution approving the proposed annexation.***
- 2. The county board of the county in which the territory is located adopts a resolution approving the proposed annexation.”***

The City of Kaukauna, which is located entirely within Outagamie County, did not seek, nor did it receive, the approval of the Town of Harrison or Calumet County, as required by statute.

In fact, the City proceeded with the annexation despite being advised by the Department of Administration of the prohibition against its proposed actions in a letter dated October 15, 2010. The letter, which has been provided for your review, deems the annexation to “be against the public interest” because, functionally, the annexation creates a town island. It goes on to point out that state law prohibits annexing into a new county without the approval of the town and county. It should be noted, however, that the Department’s role in reviewing annexations is *advisory only*.

Given the statutory prohibition against the City’s annexation and the warning from the Department of Administration, why did the City of Kaukauna adopt the ordinance to annex this small parcel in the Town of Harrison? Frankly, they proceeded because no one had the authority to stop them.

While state law specifies how a city or village must proceed when crossing into a new county for an annexation, state law also prohibits towns from bringing legal action against a city or village when

the annexation occurs under the direct annexation by unanimous approval statute (where affected property owners typically petition to be annexed into a city or village), which states:

“No action on any grounds, whether procedural or jurisdictional, to contest the validity of an annexation under sub. (2), may be brought by any town.” [s. 66.0217 (2)]

The Town of Harrison, by statute, has no legal recourse against this illegal annexation because it was a unanimous approval annexation. The Department of Administration advised the City of the prohibition against its actions, which is the extent of their ability to interject in the matter. Calumet County, while it could be argued to have legal standing on this issue, simply chose not to get involved as it feels it really does not have, “a dog in this fight.” In sum, this clears the way for the City to move forward, unchallenged.

The City of Kaukauna decided to take the chance in adopting this annexation ordinance that no one would challenge its actions. Well, I’m here today with AB 394 and SB 333 to offer that challenge.

I have repeatedly expressed to both Town and City leaders that my priority is for the two sides to work out this long-standing impasse, locally. I would say that I have even gone so far as to beg the City and Town to come together in earnest discussions to find resolution and to get a boundary agreement in place. While it seemed progress was finally on the horizon in late 2011, those negotiations have recently been stymied by the Kaukauna City Council. Frankly, the two sides are seemingly no further along than they were in 2004, and the area in question – prime for growth and economic development – continues to sit idle.

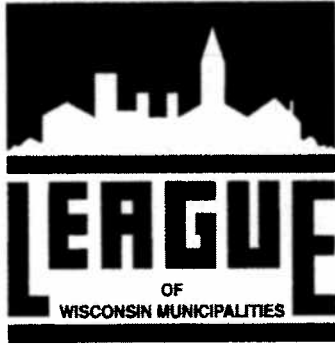
I want to believe that the City is sincere in its stated desire to work with the Town toward a mutually beneficial boundary agreement. However, the history on this issue seems to indicate otherwise.

In 2004, anticipating the upcoming change in state law regarding cross-county annexations, the City adopted an ordinance annexing approximately 239 acres in the towns of Buchanan (Outagamie County) and Harrison (Calumet County). In its haste to move quickly with this annexation, however, the City failed to get the necessary signatures from the electors and property owners as required by law, which ultimately forced the City to rescind the Town of Harrison portion of the annexation.

In 2009, the City requested language be inserted into the biennial state budget allowing them to annex territory outside of Outagamie County without approval from the town board from which territory would be annexed, and without approval from the county board in which the territory is located. The Joint Committee on Finance adopted a stand-alone motion to this effect (Motion #41 – Administration – General Agency Provisions [Rep. Sherman, author] [12-4]), which I, and others, successfully fought to remove as the budget process moved forward.

It is time to stop the game playing. Once again, I ask the City and the Town – publicly and adamantly – to go back to the table and voluntarily negotiate in good faith. My challenge – to both sides – is to put the past behind, to find some common ground, and to move beyond the power struggle so that this area can ultimately realize its economic development potential. The alternative is to face being *forced* back to the table in the event that AB 394/SB 333 becomes law and invalidates this annexation.





122 W. Washington Avenue
Suite 300
Madison, Wisconsin 53703-2715

608/267-2380
800/991-5502
Fax: 608/267-0645

E-mail: league@lwm-info.org
www.lwm-info.org

To: Assembly Committee on Rural Economic Development and Rural Affairs
Senate Committee on Financial Institutions and Rural Issues

From: Curt Witynski, Assistant Director, League of Wisconsin Municipalities

Date: February 8, 2012

Re: AB 394/SB 333, Voiding a Specific Unanimous Approval Annexation

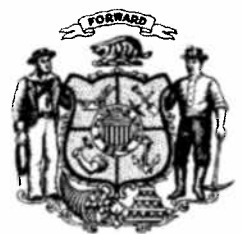
The League of Wisconsin Municipalities opposes AB 394/SB 333 for the following reasons:

- The Wisconsin State Legislature has never before passed a law voiding a unanimous approval or any other type of annexation.
- Passing this bill will establish a bad precedent. The Legislature should not interfere in a municipal annexation initiated by a private property owner.
- AB 394/SB 333 is particularly egregious in its interference because it voids an annexation that was finalized nearly two years ago, in the fall of 2010.
- Litigation concerning the legitimacy of the City of Kaukauna annexation is pending and negotiations over a possible settlement between the city and the town are ongoing.

For the above reasons, we urge you to vote against recommending passage of AB 394/SB 333.
Thanks for considering our comments.



WISCONSIN STATE LEGISLATURE



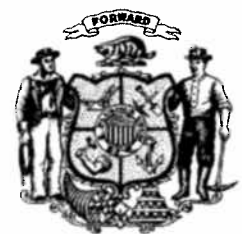
TIMELINE: ANNEXATION ATTEMPTS BY THE CITY OF KAUKAUNA INTO THE TOWN OF HARRISON

- March 2004 Wisconsin Legislature submits SB 87 which limits the authority of cities and villages to annex territory in another county unless the cities or villages already existed in that county.
- April 2004 City of Kaukauna (Outagamie County) passes annexation ordinance 1512, annexing approximately 239 acres in the towns of Buchanan (Outagamie County) and Harrison (Calumet County) in anticipation of the passage of 2003 SB 87.
- June 2004 Town of Harrison learns that the City of Kaukauna failed to get the necessary signatures from the electors and property owners as required by law. Files suit in circuit court.
- June-Sept. 2004 Town attempts to negotiate with Kaukauna on a boundary agreement. Kaukauna sends town a letter stating that they will not negotiate until after the court case is resolved. (Attachment A)
- Sept. 2004 The Kaukauna City Council votes to rescind the annexation into Calumet County and the case is dismissed. (Attachment B)
- Oct. 2006 Highline Development requested that Darboy Sanitary District (Sanitary District for the towns of Buchanan and Harrison) extend sewer and water to an area east of Hwy 55 and that the "hold status" be lifted from their property located south of KK (triangle area).
- Oct. 2006 Darboy Sanitary petitions East Central Regional Planning to remove the hold status on the "triangle area" in order to provide sewer and water to the development. (Hold status was placed on area during 2004 annexation attempt by Kaukauna).
- July 2007 East Central Regional Planning denied the request of Darboy Sanitary District and instead awarded the area to the City of Kaukauna even though they could not cross the county lines without the approval of the Town of Harrison and Calumet County.
- Nov. 2007 Darboy Sanitary District appeals the decision to the Wisconsin Department of Natural Resources who has authority over sewer service plans.
- May 2008 WDNR gives a preliminary decision that reverses ECRP decision and awards the area to the Darboy Sanitary District. A large factor in its

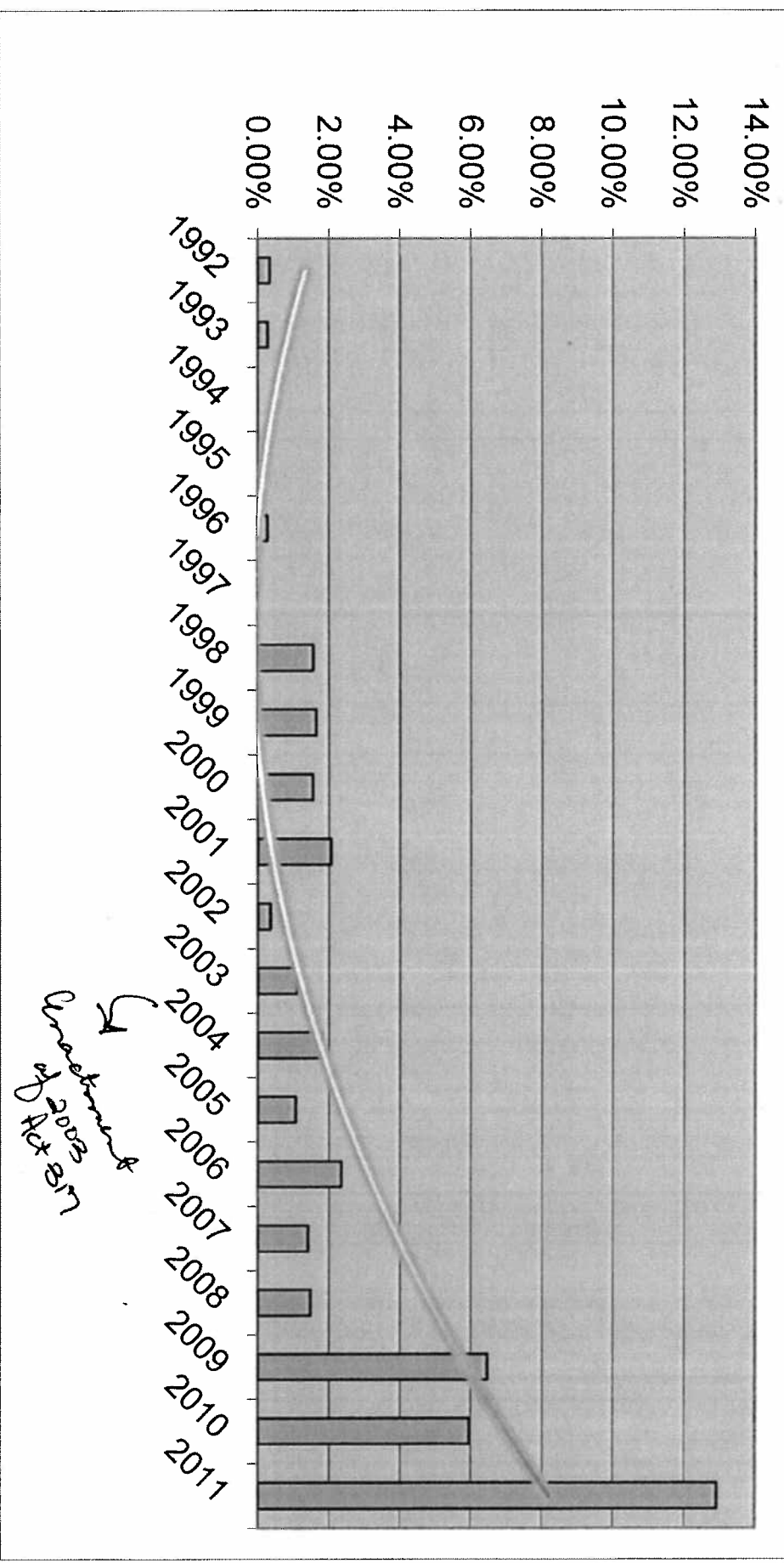
- decision is that the City of Kaukauna could not annex the area without the approval of the Town of Harrison and Calumet County. (Attachment C)
- June 2008 City of Kaukauna requests a public hearing on the decision of the WDNR.
- Feb. 2009 WDNR issues final decision awarding the area to the Darboy Sanitary District provided that the Heart of the Valley Metropolitan Sewerage District allows the area to be served. (Attachment D)
- May 2009 City of Kaukauna asks that language be inserted into the budget bill to allow them to annex territory in the Town of Harrison without getting Town or County approval. This was later removed.
- Dec. 2009 The Heart of the Valley Metropolitan Sewerage District approved the inclusion of the “triangle area” into the Darboy Sanitary District.
- Jan. 2010 City of Kaukauna sues the WDNR over their decision.
- Sept. 2010 Town receives notice of a proposed annexation by the City of Kaukauna of approximately 8 acres referred to as the “Van Treeck” property.
- Oct. 2010 Wisconsin Department of Administration reviews the annexation and finds that the “...annexation to be against the public interest because it is contrary to the spirit and intent of statute and caselaw.”
- They also noted that s. 66.0217(14)(b) prohibits municipalities from annexing into a new county unless both the new town and county approve the annexation by resolution. (Attachment E)
- Oct. 19, 2010 Kaukauna City Council approves the “Van Treeck” annexation against the review of the Department of Administration and against Wisconsin State law.
- Jan. 2011 Darboy Sanitary District and Town of Harrison file suit against the City of Kaukauna for violating Wisconsin’s annexation laws. The case is still pending.
- Feb. 2011 Outagamie County Judge Nancy Krueger rules in favor of the WDNR and the area is awarded to the Darboy Sanitary District. (Attachment F)
- March 2011 City of Kaukauna appeals the decision of the WDNR. The case is still pending.
- April 2011 East Central Regional Planning revises 2030 Fox Cities Sewer Service Area map and adds area to Darboy Sanitary District. However, after Kaukauna’s appeal they have since denied anyone extending into the area.



WISCONSIN STATE LEGISLATURE



DOA Reviewed Annexations Percent Against the Public Interest



Annexation Review in Wisconsin

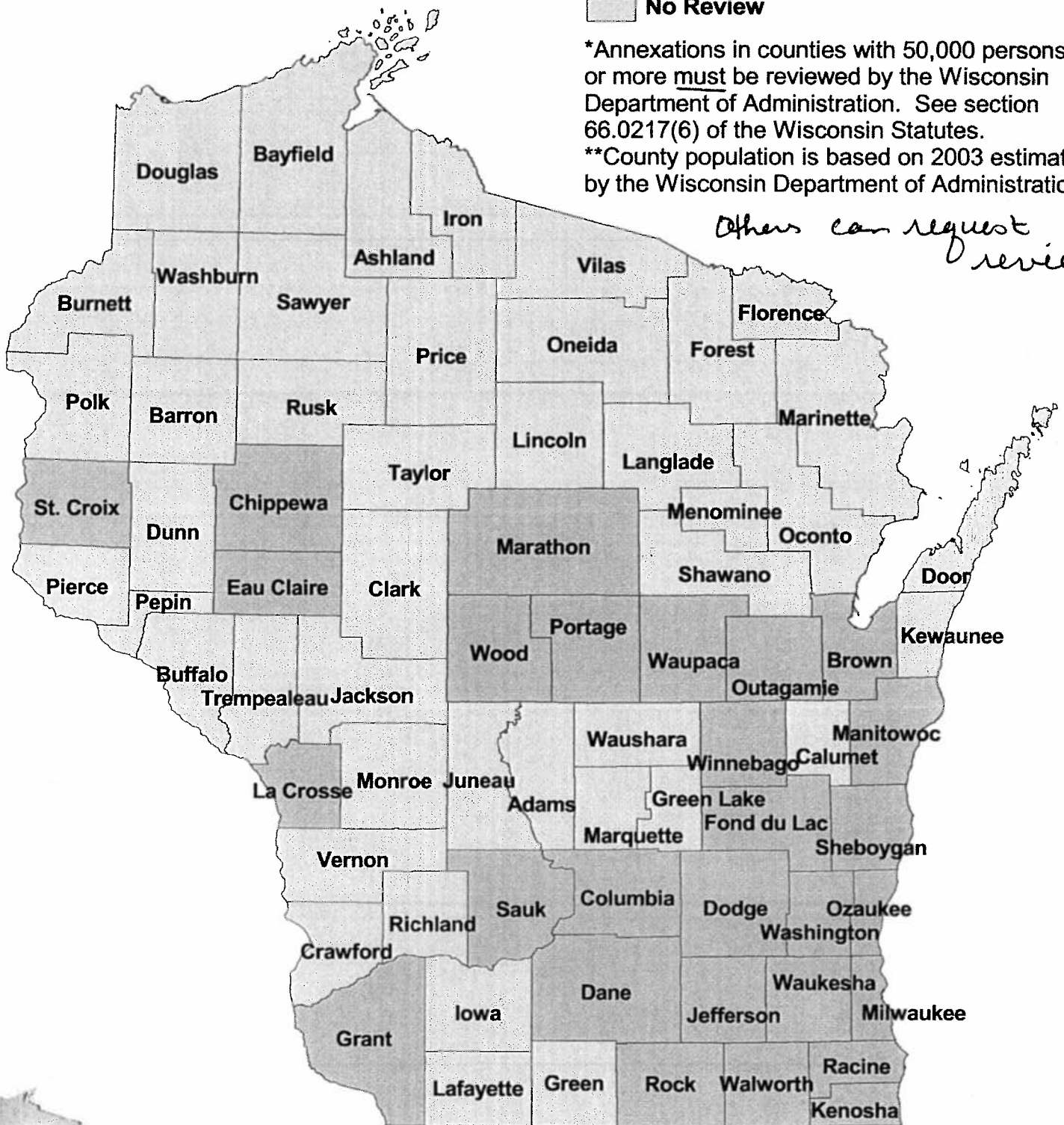
Department of Administration Review

-  Review
-  No Review

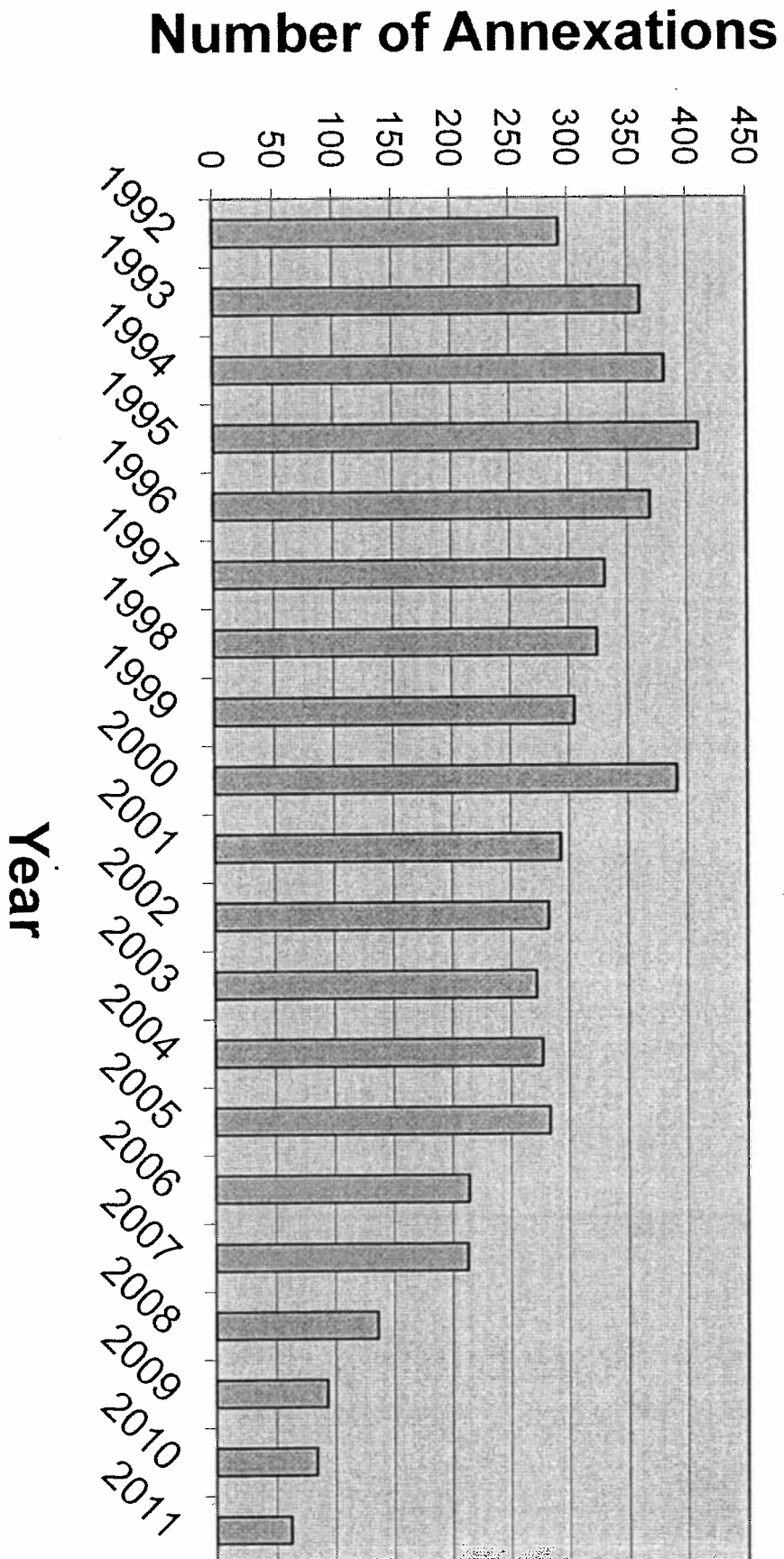
*Annexations in counties with 50,000 persons or more must be reviewed by the Wisconsin Department of Administration. See section 66.0217(6) of the Wisconsin Statutes.

**County population is based on 2003 estimates by the Wisconsin Department of Administration.

Others can request review.

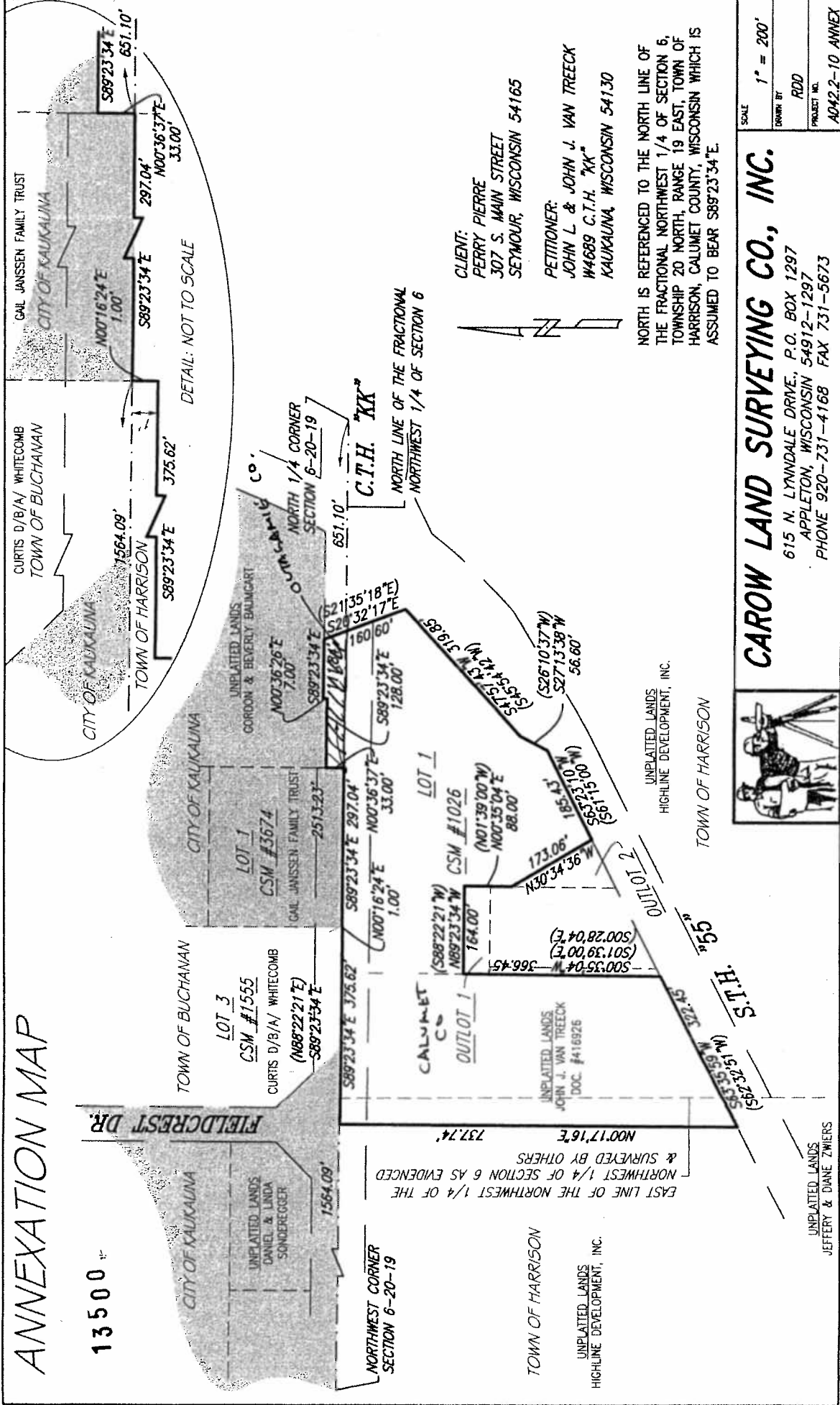


DOA Reviewed Annexations



ANNEXATION MAP

13500

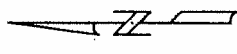


DETAIL: NOT TO SCALE

CLIENT:
PERRY PIERRE
307 S. MAIN STREET
SEYMOUR, WISCONSIN 54165

PETITIONER:
JOHN L. & JOHN J. VAN TREECK
W4689 C.T.H. "KK"
KAUKAUNA, WISCONSIN 54130

NORTH IS REFERENCED TO THE NORTH LINE OF THE FRACTIONAL NORTHWEST 1/4 OF SECTION 6, TOWNSHIP 20 NORTH, RANGE 19 EAST, TOWN OF HARRISON, CALUMET COUNTY, WISCONSIN WHICH IS ASSUMED TO BEAR $S89^{\circ}23'34''E$.



SCALE	1" = 200'
DRAWN BY	RDD
PROJECT NO.	A042.2-10 ANNEX

CAROW LAND SURVEYING CO., INC.
615 N. LYNDALE DRIVE, P.O. BOX 1297
APPLETON, WISCONSIN 54912-1297
PHONE 920-731-4168 FAX 731-5673



UNPLATTED LANDS
JEFFERY & DIANE ZWIERS