



# SANITARY SEWER SERVICE AREA FOR THE VILLAGE OF BUTLER

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COMMUNITY ASSISTANCE PLANNING REPORT  
NUMBER 99

SANITARY SEWER SERVICE AREA FOR  
THE VILLAGE OF BUTLER  
WAUKESHA COUNTY, WISCONSIN

Prepared by the  
Southeastern Wisconsin Regional Planning Commission  
P. O. Box 769  
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February 1984

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# SOUTHEASTERN WISCONSIN REGIONAL PLANNING COMMISSION

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February 22, 1984

TO: Village of Butler and the Waukesha County Park and Planning Commission

The adopted regional water quality management plan for southeastern Wisconsin identifies in a preliminary manner recommended sanitary sewer service areas tributary to each of the existing and proposed sewage treatment plants within the Region. The plan recommends that these service areas be refined and detailed through the cooperative efforts of the local units and agencies of government concerned so that the service areas properly reflect local, as well as areawide, development objectives. This refinement and detailing is particularly important in light of provisions in the Wisconsin Administrative Code which require the Regional Planning Commission to review and comment on all proposed sanitary sewer extensions, relating such extensions to the sanitary sewer service areas identified in the adopted regional water quality management plan. If such review can be based on a refined service area cooperatively identified by the local units of government concerned, then no conflicts concerning sanitary sewer extensions should arise, and the entire sewerage system and related land use development process can proceed in a smooth and efficient manner.

In accord with the recommendations made in the adopted regional water quality management plan, and at the specific request of the Village of Butler, the Regional Planning Commission assisted the Village in refining and detailing the recommended sanitary sewer service area of the Village, this area being tributary to the Milwaukee metropolitan sewerage system. This report documents the results of that refinement and detailing process.

The report contains a map showing the recommended refined sanitary sewer service area and the location and extent of the primary environmental corridors lying within that service area. These primary environmental corridors contain the best and most important elements of the natural resource base within the sewer service area. Their preservation in essentially natural open uses is important to the maintenance of the overall quality of the environment in the Village and in the larger urban region of which the Village is an integral part, while avoiding the creation of serious and costly developmental problems. Accordingly, urban development should not be encouraged to occur within these corridors, a factor which should be considered in the future extension of sanitary sewer service.

During preparation of this report, meetings were held with local elected officials and concerned citizens. These meetings culminated in a public hearing held on February 21, 1984, to discuss the findings and recommendations of the work and to receive the comments and suggestions of those officials and citizens most directly affected. The recommendations contained in this report reflect the pertinent comments and suggestions made at those meetings and the public hearing.

The sanitary sewer service area herein presented is intended to constitute a refinement of the regional water quality management plan adopted by the Commission in July 1979. Accordingly, upon adoption of this report by the Village of Butler, and subsequent adoption by the Regional Planning Commission, the report will be certified to the Wisconsin Department of Natural Resources, the Governor, and the U. S. Environmental Protection Agency as an amendment to the adopted regional water quality management plan.

The sanitary sewer service area presented in this report provides a sound guide which can assist the responsible local public officials in the making of development decisions in the Village of Butler. Accordingly, careful consideration and adoption of this report by all parties concerned is respectfully urged. The Regional Planning Commission stands ready to assist the Village in implementing the recommendations contained in this report.

Respectfully submitted,



Kurt W. Bauer  
Executive Director

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## Chapter I

### INTRODUCTION

#### BACKGROUND

On July 12, 1979, the Southeastern Wisconsin Regional Planning Commission formally adopted an areawide water quality management plan for southeastern Wisconsin. The plan is aimed at achieving clean and wholesome surface waters within the seven-county Region, surface waters that are "fishable and swimmable."<sup>1</sup>

The plan has five basic elements: 1) a land use element consisting of recommendations for the location of new urban development in the Region and for the preservation of primary environmental corridors and prime agricultural lands; 2) a point source pollution abatement element, including recommendations concerning the location and extent of sanitary sewer service areas, the location, type, and capacity of, and the level of treatment to be provided at, sewage treatment facilities, the location and configuration of intercommunity trunk sewers, and the abatement of pollution from sewer system overflows and from industrial wastewater discharges; 3) a nonpoint source pollution abatement element, consisting of recommendations for the control of pollutant runoff from rural and urban lands; 4) a sludge management element, consisting of recommendations for the handling and disposal of sludges from sewage treatment facilities; and 5) recommendations for the establishment of continuing water quality monitoring efforts in the Region.

The plan was formally certified over the period from July 23 to September 20, 1979, to all of the local units of government in the Region and to the concerned state and federal agencies. The plan was formally endorsed by the Wisconsin Natural Resources Board on July 25, 1979. Such endorsement is particularly important because under state law and administrative rules, certain actions by the Wisconsin Department of Natural Resources (DNR) must be found to be in accordance with the adopted and endorsed plan. These actions include, among others, DNR approval of waste discharge permits, DNR approval of state and federal grants for the construction of wastewater treatment and conveyance facilities, and DNR approval of locally proposed sanitary sewer extensions.

#### NEED FOR REFINEMENT AND DETAILING OF LOCAL SANITARY SEWER SERVICE AREAS

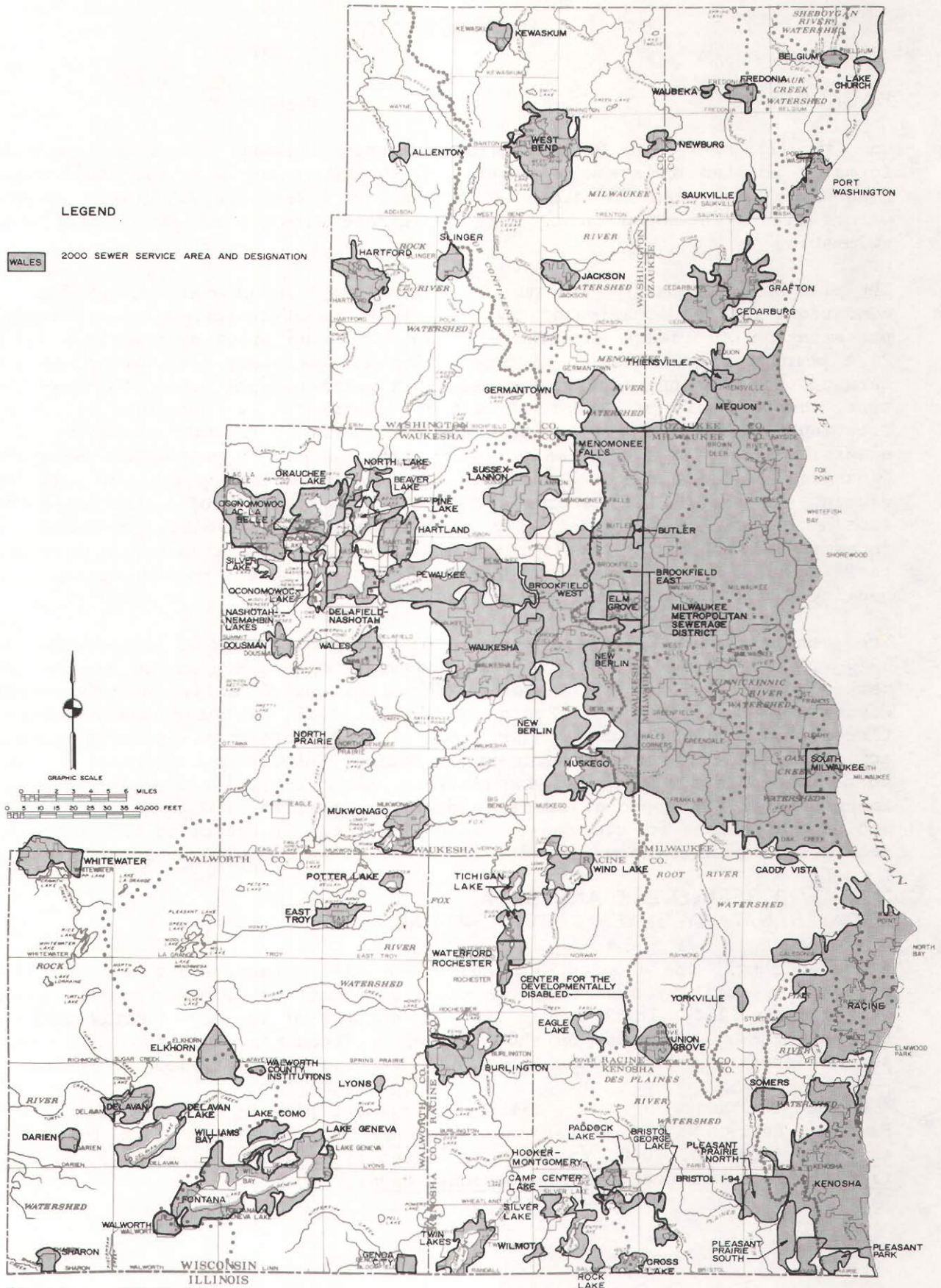
As noted above, the adopted regional water quality management plan includes recommended sanitary sewer service areas attendant to each recommended sewage treatment facility. There are in the plan a total of 85 such identified sanitary sewer service areas, as shown on Map 1. These recommended sanitary sewer service areas are based upon the urban land use configuration identified in

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<sup>1</sup>The adopted areawide water quality management plan is documented in SEWRPC Planning Report No. 30, A Regional Water Quality Management Plan for Southeastern Wisconsin: 2000, Volume One, Inventory Findings; Volume Two, Alternative Plans; and Volume Three, Recommended Plan.

# Map 1

## RECOMMENDED SANITARY SEWER SERVICE AREAS IN THE REGION AS IDENTIFIED IN THE ADOPTED REGIONAL WATER QUALITY MANAGEMENT PLAN



Source: SEWRPC.

the Commission-adopted regional land use plan for the year 2000.<sup>2</sup> As such, the delineation of the areas is necessarily general, and may not reflect detailed local planning considerations.

Section NR 110.08(4) of the Wisconsin Administrative Code requires that the Wisconsin Department of Natural Resources make a finding that all proposed sanitary sewer extensions be in conformance with adopted areawide water quality management plans, and with the sanitary sewer service areas identified in such plans. The Department, in carrying out its responsibilities in this respect, requires that the Regional Planning Commission, as the designated areawide water quality management planning agency for the Southeast Wisconsin Region, review and comment on each proposed sewer extension as to its relationship to the approved plan and sewer service areas. In order to properly reflect local, as well as areawide, planning concerns in the execution of this review responsibility, the Regional Planning Commission, in adopting the areawide water quality management plan, recommended that steps be taken to refine and detail each of the 85 sanitary sewer service areas delineated in the plan in cooperation with the local units of government concerned. The refinement and detailing process was envisioned to consist of the following seven steps:

1. The preparation of a base map at an appropriate scale for each sanitary sewer service area identified in the adopted areawide water quality management plan.
2. The delineation on that base map of the design year 2000 sanitary sewer service area as proposed in the regional water quality management plan and consistent with the objectives set forth in the adopted regional land use plan.
3. The conduct of intergovernmental meetings involving the local or areawide unit or units of government operating the sewage treatment facility or facilities concerned and the other local units of government which are to be provided sanitary sewer service by the sewage treatment facility or facilities concerned. At these meetings, the initial sanitary sewer service area delineation is to be presented and discussed, and the positions of each of the units of government concerned solicited.
4. The preparation of modifications to the initially proposed sanitary sewer service area to reflect the agreements reached at the intergovernmental meetings, meeting to the fullest extent practicable the objectives expressed both in the adopted areawide water quality management and regional land use plans and in any adopted local land use and sanitary sewerage system plans.
5. The holding of a public hearing jointly by the Commission and the local or areawide unit or units of government operating the treatment facility or facilities concerned to obtain public reaction to site-specific sewer service area issues that might be raised by the proposed sewer service area delineation.

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<sup>2</sup>See SEWRPC Planning Report No. 25, A Regional Land Use Plan and a Regional Transportation Plan for Southeastern Wisconsin: 2000, Volume One, Inventory Findings; and Volume Two, Alternative and Recommended Plans.

6. The preparation of a final sanitary sewer service area map and accompanying report.
7. Adoption of the final sewer service area map by the Commission and certification of the map to the Wisconsin Department of Natural Resources and the U. S. Environmental Protection Agency as an amendment to the adopted areawide water quality management plan. Desirably, such adoption by the Commission would follow endorsement of the map by the local or areawide unit or units of government operating the sewage treatment facility or facilities concerned, and by the governing bodies of the local units of government which are to be served by the sewage treatment facility or facilities. While such a consensus by the local governments concerned will always be sought by the Commission, it is recognized that in some cases unanimous support of the refined and detailed sanitary sewer service areas may not be achieved. In those cases, the Commission will have to weigh the positions of the parties concerned and make a final determination concerning the issues involved.

### THE BUTLER SANITARY SEWER SERVICE AREA REFINEMENT PROCESS

The process of refining and detailing the sanitary sewer service areas in southeastern Wisconsin was initiated subsequent to the Commission adoption of the regional water quality management plan in July 1979. In the Village of Butler, that process was precipitated by a private land development proposal known as the "Clarke's Woods Subdivision." As discussed later in this report, formal objections to the development of the Clarke's Woods Subdivision were registered by the Waukesha County Park and Planning Commission, that Commission using as a basis for its objection a conflict between the proposed subdivision and the primary environmental corridor land preservation recommendations set forth in the adopted regional land use, park and open space, and regional water quality management plans. Following litigation, the Waukesha County Park and Planning Commission was directed by the Circuit Court of Waukesha County to remove its objection to the proposed subdivision, enabling the subdivision to be approved by the Village of Butler. However, after approval of the Clarke's Woods Subdivision, the developers were unable to obtain DNR approval of the sanitary sewer extensions needed to effect the development of the subdivision. The DNR indicated to the developers that it could not approve the sewer extensions unless and until the conflict between the proposed subdivision and the adopted regional land use and regional water quality management plans was resolved. After consultation concerning this matter with the Village of Butler, the Waukesha County Park and Planning Commission, and the DNR, the Commission determined to address the resolution of the conflict between the regional plans and the Clarke's Woods Subdivision within the context of a refined sanitary sewer service area plan for the entire Village.

An interagency meeting on the refinement and detailing of the Butler sanitary sewer service area was held on February 17, 1984. In attendance at the meeting were representatives of the developer of the Clarke's Woods Subdivision, the Village of Butler, the Waukesha County Park and Planning Commission, and the Regional Planning Commission. At the conclusion of this meeting, all parties in attendance had agreed upon a preliminary refined and detailed sanitary sewer service area to be presented at a public hearing. If approved by all parties

concerned after the public hearing, that sanitary sewer service area was to constitute an amendment to the regional land use and regional water quality management plans. The plan would permit development of the Clarke's Woods Subdivision to proceed with sanitary sewer service, although not as originally envisioned in the platting of the lands involved, with changes in the development being required to protect the environmental corridor along the Menomonee River.

The public hearing was held on February 21, 1984. The public reaction to the proposed sanitary sewer service area plan is documented in the minutes contained in Appendix A and is summarized later in this report. The final, agreed-upon, refined and detailed sanitary sewer service area for the Village of Butler is described in Chapter II of this report.

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## Chapter II

### PROPOSED SANITARY SEWER SERVICE AREA

#### SIGNIFICANCE OF SEWER SERVICE AREA DELINEATION

As noted in Chapter I, recent changes in the Wisconsin Department of Natural Resources (DNR) rules governing the extension of sanitary sewers have made the process of delineating local sanitary sewer service areas important for local units of government and private land developers. Prior to the recent rule changes, DNR review of locally proposed sanitary sewer extensions was confined primarily to engineering considerations, and was intended to ensure that the sewers were properly sized and constructed to accommodate the anticipated sewage flows. The recent rule changes significantly expanded the scope of the DNR review process to include water quality-oriented land use planning considerations. Before the DNR can approve a locally proposed sanitary sewer extension, it must make a finding that the lands to be served by the proposed extension lie within an approved sanitary sewer service area. Such areas are approved by the Wisconsin Natural Resources Board through approval of an adopted areawide water quality management plan and any subsequent amendments thereto. If a locally proposed sanitary sewer extension is designed to serve areas not recommended for sewer service in an areawide water quality management plan, the DNR must deny approval of the extension. Consequently, it is important that an intergovernmental consensus be reached in the delineation of proposed future sanitary sewer service areas.

#### PROPOSED SANITARY SEWER SERVICE AREA AS SET FORTH IN SEWRPC PLANNING REPORT NO. 30

The plan year 2000 sanitary sewer service area tributary to the Milwaukee Metropolitan Sewerage System within the Village of Butler--as proposed in the adopted areawide water quality management plan--is also the study area considered in the refinement of the Butler sanitary sewer service area. This area is coterminous with the corporate limits of the Village of Butler, as shown on Map 2. This area encompasses about 0.8 square mile.

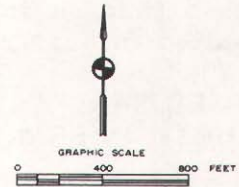
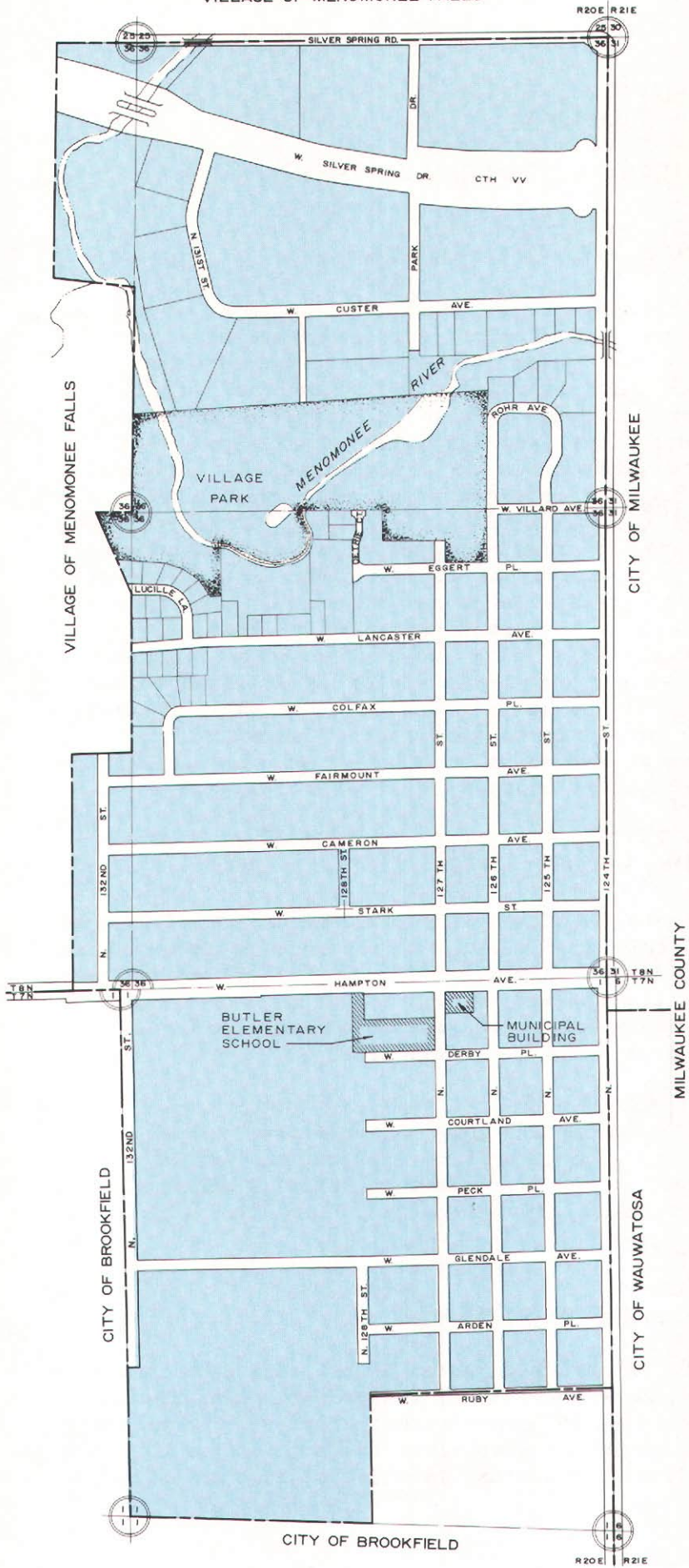
The 1980 resident population of the Village of Butler as determined by the U. S. Bureau of the Census was 2,059 persons, all of whom were provided with centralized sanitary sewer service. The population expected to reside in the Village by the plan design year 2000 was estimated in SEWRPC Planning Report No. 30 at 2,200 persons. Except for a few parcels of land, the Village is essentially fully developed.

#### DETERMINATION OF ENVIRONMENTALLY SIGNIFICANT LANDS IN THE VILLAGE OF BUTLER

Environmental corridors are defined as linear areas in the landscape containing concentrations of natural resource and natural resource-related amenities. These corridors generally lie along the major stream valleys, around major lakes, and in the Kettle Moraine area of southeastern Wisconsin. Almost all of the remaining high-value wetlands, woodlands, wildlife habitat areas, major



THE BUTLER SANITARY SEWER SERVICE AREA AS DEFINED IN SEWRPC PLANNING REPORT NO. 30



Source: SEWRPC.

bodies of surface water, and delineated floodlands and shorelands are contained within these corridors. In addition, significant groundwater recharge and discharge areas, many of the most important recreational and scenic areas, and the best remaining potential park sites are located within the environmental corridors. Such environmental corridors are, in effect, a composite of the most important individual elements of the natural resource base in southeastern Wisconsin and have immeasurable environmental, ecological, and recreational value.

The land use element of the adopted regional water quality management plan recommends that lands identified as primary environmental corridors not be developed for intensive urban use. Accordingly, the plan further recommends that sanitary sewers not be extended into such corridors for the purpose of accommodating urban development in the corridors. It was, however, recognized in the plan that it would be necessary in some cases to construct sanitary sewers across and through primary environmental corridors, and that certain land uses requiring sanitary sewer service could be properly located in the corridors, including park and outdoor recreation facilities and certain institutional uses. In some cases, very low-density residential development on five-acre lots, compatible with the preservation of the corridors in essentially natural open uses, may also be permitted to occupy corridor lands, and it may be desirable to extend sewers into the corridors to serve such uses. Basically, however, the adopted regional land use plan seeks to ensure that the primary environmental corridor lands are not destroyed through conversion to intensive urban uses.

Since the Village of Butler is essentially already fully developed, the major work effort in refining the Butler sanitary sewer service area was to map in detail the environmentally significant lands in the Village of Butler. Accordingly, Commission inventories were reviewed and updated as necessary with respect to the following elements of the natural resource base: lakes, streams, and associated shorelands and floodlands; wetlands; woodlands; wildlife habitat areas; areas of rugged terrain and high relief topography; wet, poorly drained, and organic soils; and remnant prairies. In addition, inventories were reviewed and updated as necessary with respect to such natural resource-related features as existing parks, potential park sites, sites of historic and archeological value, areas possessing scenic vistas or viewpoints, and areas of scientific value.

Each of these natural resource and resource-related elements was mapped on one inch equals 400 feet scale, ratioed and rectified aerial photographs. A point system for value rating the various elements of the resource base was established (see Table 1) and, on the basis of the score of the point values, the primary environmental corridor delineations were established. To qualify for inclusion in a primary environmental corridor, an area must exhibit a point value of 10 or more. In addition, a primary environmental corridor must be at least 400 acres in size, be at least two miles long, and have a minimum width of 200 feet.

The Commission also identifies secondary environmental corridors. Secondary environmental corridors, while not as significant as the primary environmental corridors in terms of the overall resource values concerned, should be considered for preservation as the process of urban development proceeds, because

Table 1

VALUES ASSIGNED TO NATURAL RESOURCE BASE AND RESOURCE  
BASE-RELATED ELEMENTS IN THE PROCESS OF DELINEATING  
PRIMARY AND SECONDARY ENVIRONMENTAL CORRIDORS

Resource Base or Related Element	Point Value
<b>Natural Resource Base</b>	
Lake	
Major (50 acres or more).....	20
Minor (5-49 acres).....	20
Rivers or Streams (perennial).....	10
Shoreland	
Lake or Perennial River or Stream.....	10
Intermittent Stream.....	5
Floodland (100-year recurrence interval).....	3
Wetland.....	10
Wet, Poorly Drained, or Organic Soil.....	5
Woodland.....	10
Wildlife Habitat	
High Value.....	10
Medium Value.....	7
Low Value.....	5
Steep Slope	
20 Percent or More.....	7
13-19 Percent.....	5
Prairie.....	10
<b>Natural Resource Base-Related</b>	
Existing Park or Open Space Site	
Rural Open Space Site.....	5
Other Park and Open Space Sites.....	2
Potential Park Site	
High Value.....	3
Medium Value.....	2
Low Value.....	1
Historic Site	
Structure.....	1
Other Cultural.....	1
Archeological.....	2
Scenic Viewpoint.....	5
Scientific Area	
State Scientific Area.....	15
State Significance.....	15
County Significance.....	10
Local Significance.....	5

Source: SEWRPC.

such corridors often provide economical drainageways, as well as needed "green" space, through developing residential neighborhoods. To qualify for inclusion in a secondary environmental corridor, an area must exhibit a point value of 10 or more, with such a corridor having a minimum area of 100 acres and a minimum length of one mile.

The Commission also identifies isolated natural areas. Isolated natural areas generally consist of those natural resource base elements that have "inherent natural" value such as wetlands, woodlands, wildlife habitat areas, and surface water areas but that are separated physically from the primary and secondary environmental corridors by intensive urban and agricultural land uses. Since isolated natural areas may provide the only available wildlife habitat in an area, provide good locations for local parks and nature study areas, and lend aesthetic character and natural diversity to an area, these areas should also be protected and preserved in a natural state to the extent practicable. An isolated natural area must be at least five acres in size.

As shown on Map 3, there are about 57 acres of primary environmental corridor lands in the Village of Butler, or about 12 percent of the total area of the Village. These lands lie along the Menomonee River through the Village. There are no secondary environmental corridors or isolated natural areas located within the Village.

While the adopted regional water quality management plan places great emphasis upon the protection of the lands identified as primary environmental corridors in essentially natural, open space uses, it also recognizes that there may be situations in which the objective of preserving the corridor lands directly conflicts with other legitimate regional and local development objectives. For example, the regional plan recognizes that if the Village of Butler were to determine the need for a strategic street extension through the primary environmental corridor lands, the street extension may be found to have a greater community benefit than preservation of a small segment of the primary environmental corridor. When such conflicts in legitimate community development objectives occur, it is important that they be resolved sensitively, and that any damage to the natural environment in the corridors be minimized.

### REFINED SANITARY SEWER SERVICE AREA

The refined year 2000 sanitary sewer service area for the Village of Butler as agreed upon by the local governmental officials at the interagency meeting on February 17, and as submitted at the public hearing, is shown on Map 4. There is no change in the overall boundary of the sanitary sewer service area from that presented in SEWRPC Planning Report No. 30, that area being coterminous with the village limits. The only change relates to the delineation of the primary environmental corridor along the Menomonee River. The refined plan would alter the boundary of the primary environmental corridor in the vicinity of the intersection of W. Lancaster Avenue and Lucille Lane. The net result of the proposed change in the primary environmental corridor would be a reduction in corridor lands in the Village along the Menomonee River from about 57 acres to about 50 acres.

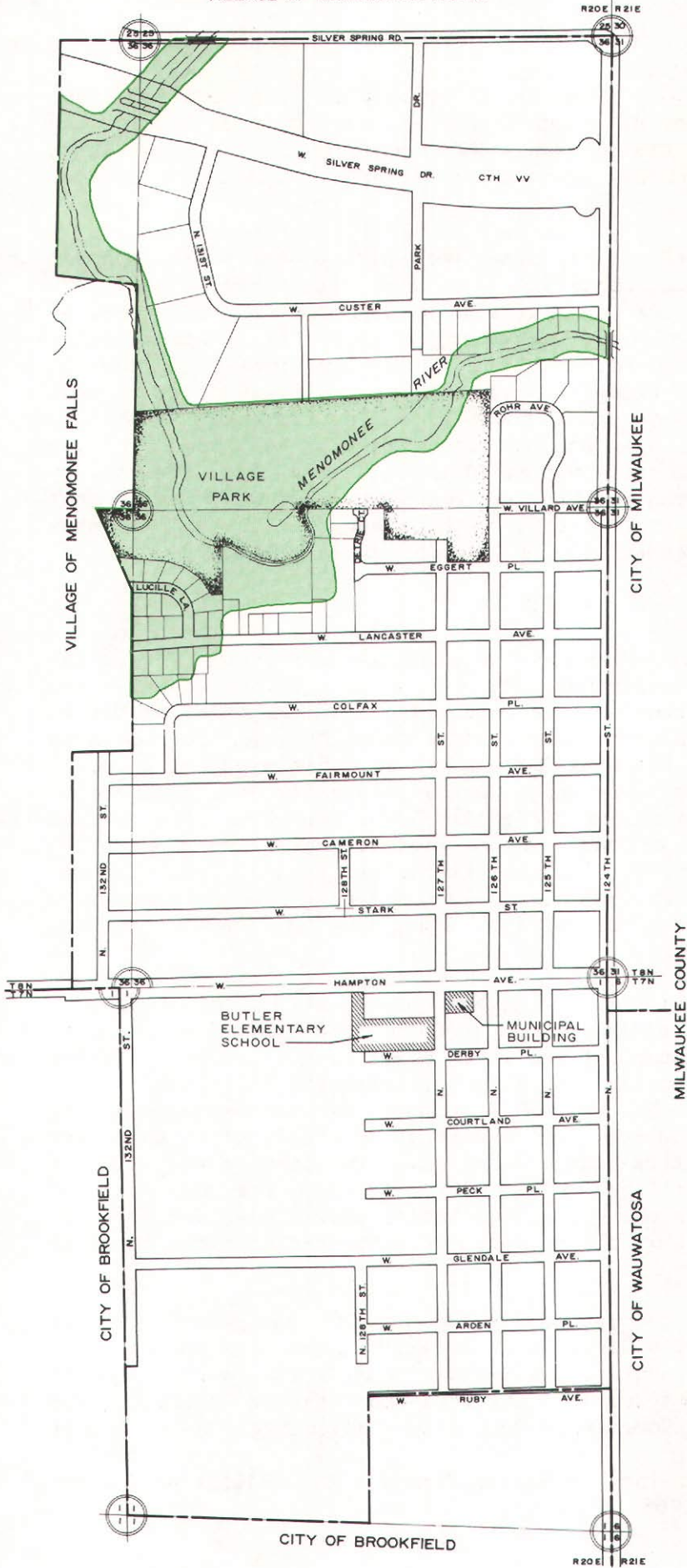
The lands proposed to be removed from the primary environmental corridor constitute a portion of the plat of the Clarke's Woods Subdivision, as shown on Map 5. Planning for the development of the lands comprising the Clarke's Woods Subdivision area extends back to 1966. A master plan for the Village of Butler prepared at that time recommended that W. Lancaster Avenue be extended to N. 132nd Street. N. 132nd Street was proposed to be extended, with the extensions of these two streets intersecting in an area immediately west of the Village of Butler in the Village of Menomonee Falls.<sup>1</sup> The extension of W. Lancaster Avenue proposed in the Village of Butler master plan would necessarily involve the penetration of the primary environmental corridor lands as identified on Map 3.


Subsequent to the adoption of the regional water quality management plan in 1979, a preliminary plat of the Clarke's Woods Subdivision was presented to the Village of Butler for approval. In accordance with State law, a copy of the plat was forwarded to the Waukesha County Park and Planning Commission for its review and comment, that Commission being an "objecting" agency under

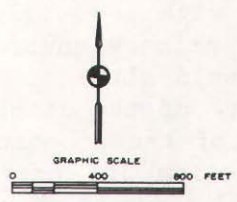
<sup>1</sup>Carl L. Gardner & Associates, Inc., A Master Plan for the Village of Butler, Wisconsin, Chicago, Illinois, 1966.



ENVIRONMENTALLY SIGNIFICANT LANDS IN THE VILLAGE OF BUTLER

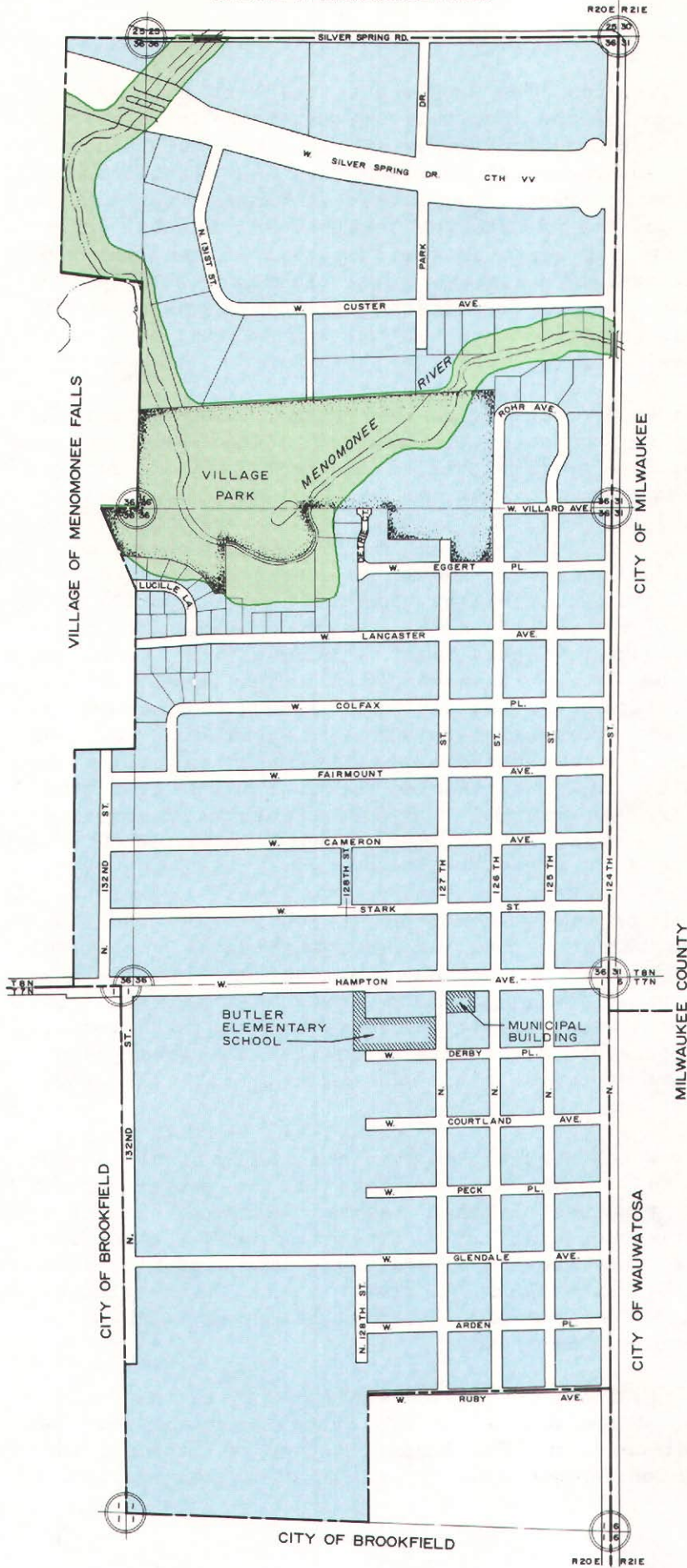


LEGEND  
 PRIMARY ENVIRONMENTAL CORRIDOR



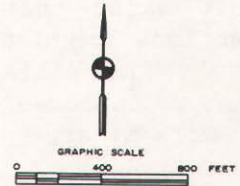
Source: SEWRPC.

BUTLER SANITARY SEWER SERVICE AREA



LEGEND

- NET SANITARY SEWER SERVICE AREA
- PRIMARY ENVIRONMENTAL CORRIDOR



Source: SEWRPC.

Chapter 236 of the Wisconsin Statutes. The Waukesha County Park and Planning Commission, properly taking note of the fact that the proposed Clarke's Woods Subdivision would provide for the platting of lands not only along W. Lancaster Avenue extended in the primary environmental corridor, but also along proposed Lucille Lane north of W. Lancaster Avenue, registered a formal objection to the plat on the basis that it conflicted with the primary environmental corridor preservation recommendations set forth in the adopted regional land use, park and open space, and water quality management plans. Thus, formal objection of the Waukesha County Park and Planning Commission precluded approval by the Village of Butler of the preliminary plat and subsequent recording of a final plat in accordance with that preliminary plat.

The developers of the Clarke's Woods Subdivision then brought suit against the Waukesha County Park and Planning Commission, seeking relief from the objection filed by that Commission. The developers prevailed in the subsequent litigation, with the Waukesha County Circuit Court ruling that the term "primary environmental corridor" as used in the regional water quality management plan and other regional plans did not provide a basis for the formal objection by Waukesha County to the Clarke's Woods plat as an objecting authority under Chapter 236 of the Wisconsin Statutes. In effect, the Court found that the term "primary environmental corridor" was not the same as a park, parkway, or other public development upon which Waukesha County could register a formal objection to a subdivision plat. Waukesha County subsequently filed an appeal of the Circuit Court's decision. The Court of Appeals sustained the order of the Circuit Court. Thus, the Circuit Court decision was left to stand, with the result being that the Circuit Court ordered Waukesha County to remove its objections to the proposed plat. This, then, enabled formal approval of a final plat by the Village of Butler. Accordingly, the Clarke's Woods Subdivision plat was approved and is now recorded. The public streets contained in the plat were cleared and rough-graded.

After gaining formal approval of the Clarke's Woods Subdivision plat, the developers of the subdivision began to take steps toward gaining approval of the sanitary sewer extensions in W. Lancaster Avenue and Lucille Lane necessary to effect development of the subdivision. Because of the conflict between the plat and the regional water quality management plan, the Wisconsin Department of Natural Resources informed the developers that the sewer extensions as proposed could not be approved unless the water quality management plan was amended to resolve that conflict.

The developers of the Clarke's Woods Subdivision then approached State Senator Susan S. Engeleiter, asking the Senator to intervene in the matter of the sewer extension approval. In response to that request, Senator Engeleiter convened a meeting of the parties concerned in an attempt to seek a resolution to the problem. In attendance at that meeting in addition to Senator Engeleiter were the developers of the Clarke's Woods Subdivision and their attorney, representatives of the Wisconsin Department of Natural Resources, and representatives of the Regional Planning Commission.

At that meeting, the Regional Planning Commission staff presented the reasons why the lands comprising much of the Clarke's Woods Subdivision are included within a primary environmental corridor. The lands proposed to be subdivided include floodplain lands along the Menomonee River, all of which were dedicated



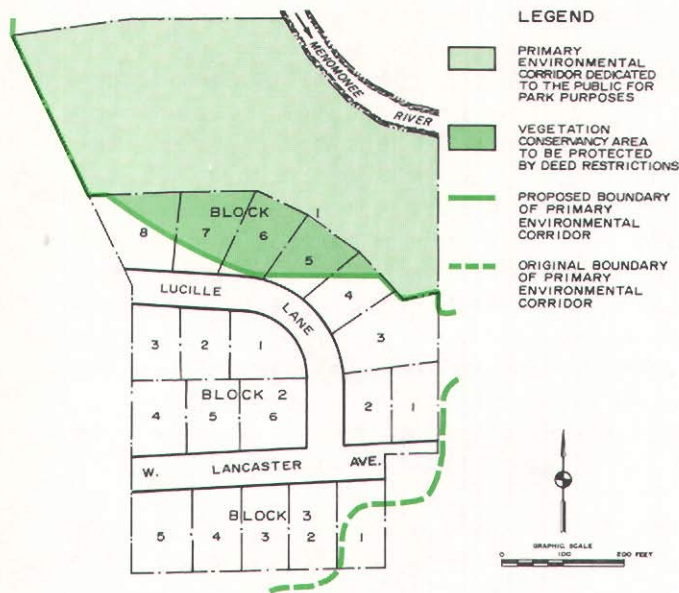
to the Village of Butler; very steep wooded slopes leading to the floodplain lands, some of which were dedicated to the Village; and flatter woodlands on and extending south from the bluff overlooking the Menomonee River, including the lands through which W. Lancaster Avenue was proposed to be extended. The Commission staff noted in particular the ecological importance of the preservation of the woodlands on that portion of the subdivision extending about 100 feet south of the bluff. The preservation of this portion of the woodlands was considered essential to the protection of the ground-layer flora found on that area and on the steep slopes leading to the Menomonee River. The destruction of the woodlands in this particularly sensitive portion of the primary environmental corridor would lead to the destruction of the ground-layer flora and, ultimately, severe erosion problems and resulting sedimentation and water quality problems in the Menomonee River. For those reasons, then, the Commission staff recommended that the regional water quality management plan be amended to accommodate development of the proposed subdivision only if a means were found to protect all of the steep slope on the site, together with an approximately 100-foot-wide strip of land south of the bluff. Toward that end, the Commission staff offered a suggested plat, as shown on Map 6, that would alter the way in which the lands would be divided.

After carefully considering the alternative development proposal for the lands involved, the developers of the Clarke's Woods Subdivision indicated that they did not wish to go through a replatting process that would be required by the Commission-suggested plat. The developer also indicated that, in their opinion, certain of the lots would have building "envelopes" that likely would require variances for building placement and development. They indicated, however, that they would be willing to take steps, through the voluntary placement of restrictions on certain lots in the recorded subdivision, to protect all of the steep slopes and the critical 100-foot strip of land on the bluff, and thus ensure the maintenance in natural, open use in perpetuity of the most environmentally sensitive of the lands involved. Toward this end, the developers prepared and submitted a proposed Declaration of Restrictions, a copy of which is set forth in Appendix B. The essence of the restrictions is summarized on Map 5.

Under the proposal, the developers would create a "vegetation conservation area" intended to fully protect the steep slopes and the 100-foot strip of land on the bluff. This vegetation conservation area encompasses portions of Lots 4, 5, 6, 7, and 8 of Block 1 of the Clarke's Woods Subdivision. The restrictions that would be attendant to the vegetation conservation area prohibit the destruction or disturbance of the existing vegetation; prohibit any excavation, filling, or grading of the lands involved; and prohibit the placement on the lands of any buildings, walls, fences, structures, or other improvements. These restrictions would "run with the land" and thus be binding upon any future purchasers of the land. In addition, the restrictions would require that Lot 5 be combined with Lot 4 to create a single building site, and that Lots 6 and 7 be combined with Lot 8 to create a single building site. In effect, then, the five individual lots that comprise the critical, environmentally sensitive portion of the primary environmental corridor would be combined so as to create two individual building sites for single-family homes. Furthermore, the placement of the homes and improvements on these two building sites would be located beyond the critically important vegetation conservation area.

Map 5

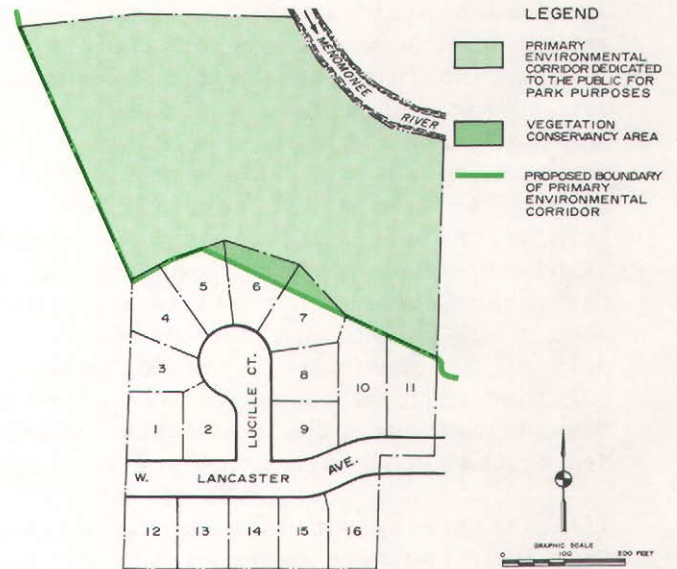
CLARKE'S WOODS SUBDIVISION IN THE VILLAGE OF BUTLER



Source: SEWRPC.

Map 6

ALTERNATIVE CLARKE'S WOODS DEVELOPMENT PLAN PROPOSED BY SEWRPC



Source: SEWRPC.

Following the interagency meeting, the proposal by the developers was reviewed by the Wisconsin Department of Natural Resources, the Waukesha County Park and Planning Commission, the Village of Butler, and the Regional Planning Commission, and was found to constitute an acceptable compromise, permitting development of the Clarke's Woods Subdivision to proceed while protecting the most important of the environmental resources in the primary environmental corridor along the Menomonee River in this location. The revised boundary of the primary environmental corridor as reflected on Map 4 includes all of the vegetation conservancy area on Lots 4 through 8 of Block 1 of the proposed subdivision, which will not be disturbed as the adjacent lands are developed.

As refined and detailed, the year 2000 sanitary sewer service area would accommodate a total plan year 2000 resident population of 2,200 persons. The resulting density approximates 6.9 dwelling units per net residential acre.<sup>2</sup>

<sup>2</sup>Net residential density is determined by dividing the total number of dwelling units anticipated in the Village of Butler in the plan design year 2000 by the net residential land area anticipated in the Village in the plan design year. The total number of dwelling units anticipated in the Village of Butler in the year 2000--832--was determined by adding 805--the existing number of dwelling units--plus 27--the number of additional dwelling units anticipated to be provided in the Village by the year 2000. The net residential land area anticipated in the Village of Butler--120 acres--was determined by adding 113 acres--the existing net residential land--plus 7 acres--the acreage allocated to new net residential development. The number of dwelling units anticipated in the Village of Butler in the design year--832--divided by the anticipated net residential land area--120 acres--results in an overall net residential density of 6.9 dwelling units per acre.

Under the plan, the entire Village would be developed for urban purposes. The primary environmental corridor along the Menomonee River would serve to protect and preserve the most important of the remaining natural resource features in the Village and to protect the water quality of the Menomonee River.

## PUBLIC REACTION TO THE PROPOSED SANITARY SEWER SERVICE AREA

A public hearing was held on February 21, 1984, for the purpose of receiving comments on the revised sanitary sewer service area, as shown on Map 4. The hearing was sponsored jointly by the Village of Butler and the Regional Planning Commission. Minutes of the public hearing are presented in Appendix A.

A review of the hearing record indicates that no substantive concerns were raised at the hearing. Accordingly, no changes were made to the Butler sewer service area plan as presented at the public hearing and as reflected on Maps 4 and 7.

## IMPLEMENTING RECOMMENDATIONS

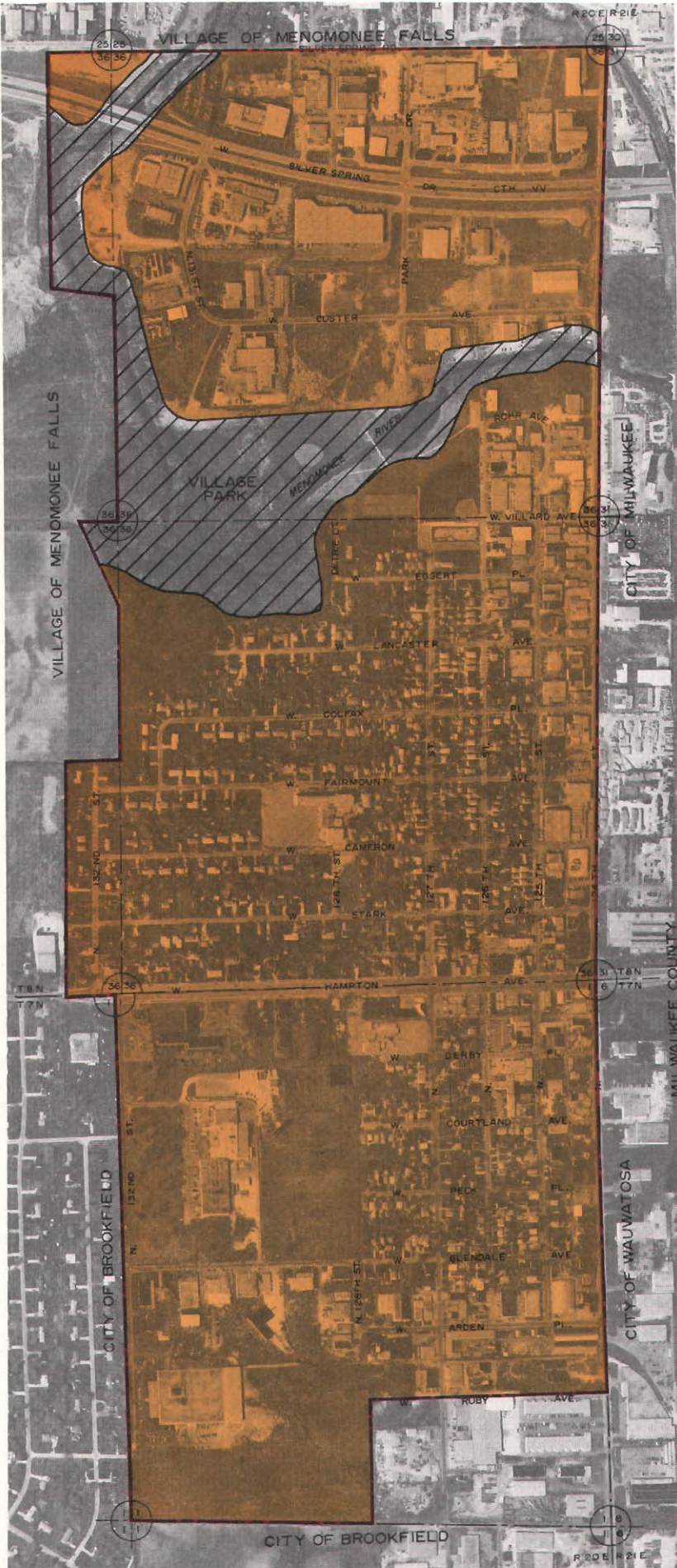
It is recommended that the following steps be taken to implement the sanitary sewer service area proposals contained in this report:

1. Formal adoption or endorsement of SEWRPC Planning Report No. 30, A Regional Water Quality Management Plan for Southeastern Wisconsin: 2000, and this SEWRPC Community Assistance Planning Report by the Village Board of the Village of Butler as the operator of the sanitary sewer system, and by the Milwaukee Metropolitan Sewerage District as the operator of the treatment facilities and trunk sewer system being utilized by the Village.
2. Formal adoption of this SEWRPC Community Assistance Planning Report by the Regional Planning Commission as an amendment to the regional water quality management plan set forth in SEWRPC Planning Report No. 30, with certification of this report as a plan amendment to all parties concerned, including the Wisconsin Natural Resources Board and the U. S. Environmental Protection Agency.
3. Review by the Village of Butler of its zoning, land subdivision control, and related ordinances to ensure that the policies expressed in such ordinances reflect the urban development recommendations inherent in the final delineated Butler sanitary sewer service area as shown on Map 7. In particular, steps should be taken to ensure that those lands identified as being environmentally significant in this report are properly zoned to reflect a policy of retaining such lands, insofar as possible, in essentially natural open uses.
4. Review by the Village of Butler of utility extension policies to ensure that such policies are consistent with the urban land development recommendations inherent in the delineation of the planned sanitary sewer service area.
5. Execution and appropriate filing of the Declaration of Restrictions attendant to the Clarke's Woods Subdivision by the developers of that subdivision.






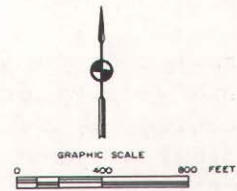
Map 7

ENVIRONMENTALLY  
SIGNIFICANT LANDS AND  
PLANNED SANITARY SEWER  
SERVICE AREA FOR THE  
VILLAGE OF BUTLER



LEGEND

-  NET SANITARY SEWER SERVICE AREA
-  PRIMARY ENVIRONMENTAL CORRIDOR
-  GROSS SANITARY SEWER SERVICE AREA BOUNDARY



Source: SEWRPC.

## SUBSEQUENT REFINEMENTS TO THE BUTLER SEWER SERVICE AREA

This report presents a refined sewer service area for the Village of Butler. The refined sewer service area was delineated cooperatively by the units and agencies of government concerned, and was subjected to review at an interagency meeting and at a public hearing. It is envisioned that the delineated sewer service area will accommodate all new urban development anticipated in the Butler area to the year 2000. Like other long-range plans, however, this sewer service area plan should be periodically reviewed--every five years--to assure that it continues to properly reflect the urban development objectives of the community involved, especially as such objectives may relate to the amount and spatial distribution of new urban development requiring sewer service. Should it be determined by the Village of Butler, as the operator of the sanitary sewer system involved, and by the Milwaukee Metropolitan Sewerage District, as the operator of the sewerage treatment facilities involved, that amendments to the sewer service area plan as presented herein are necessary, these bodies should request the Southeastern Wisconsin Regional Planning Commission to assist in the technical work required to properly amend the plan. Any such plan revision should be carried out in a manner similar to that utilized in the refinement effort described in this report. While the plan amendment may be expedited because study area base maps have been prepared and certain inventories completed as part of the sewer service area planning documented herein, such amendment should be subject to the same analyses and interagency review, and should include a public hearing to obtain the comments and suggestions of those citizens and landowners most affected by the proposed changes to the sewer service area boundary. Upon agreement on a revised sewer service area, the new plan map should be endorsed by the Village Board of the Village of Butler, by the Milwaukee Metropolitan Sewerage District, and by the Southeastern Wisconsin Regional Planning Commission prior to certification to the Wisconsin Department of Natural Resources and the U. S. Environmental Protection Agency.

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## **APPENDICES**



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## Appendix A

### PUBLIC HEARING MINUTES BUTLER SANITARY SEWER SERVICE AREA February 21, 1984, Butler Village Hall

[Editor's Note: The following is an excerpt from the minutes of the meeting of the Butler Village Board held on February 21, 1984. Public officials present at the meeting, in addition to Butler Village President Harold Pulvermacher, were Trustees Roger Benjamin, Randy Burkwald, Richard Emerick, Richard Ensslin, and Walter Woloszyk, as well as Village Administrator Charles Erickson.]

#### PUBLIC HEARING

President Pulvermacher opened the public hearing at 8:15 p.m.

The Village Administrator noted that the Butler Plan Commission had met on February 20, 1984, to consider the Butler sewer service area report and that two representatives from the Southeastern Wisconsin Regional Planning Commission were present to give further information on the report. The Plan Commission had approved the report on a 4-2 vote, subject to the deletion from the environmental corridor of a portion of land owned by Charles Aring on the south end of Park Drive.

Following Mr. Rubin's summary description of the findings and recommendations of the Butler sewer service area report, Richard Mathaus stated that the environmental corridor delineation was never adopted by the Village Board and questioned why the Regional Planning Commission could not take up the matter of the Reynolds property separately from the matter of environmental corridors. Mr. Rubin noted that one of the reasons for the Regional Planning Commission involvement in this matter was to help the Village of Butler accommodate the Clark's Woods Subdivision proposed by the Reynolds brothers in a manner which would not adversely affect the significant natural resource areas, namely the environmental corridors remaining in the Village. The most expeditious way to accomplish this to the satisfaction of the Wisconsin Department of Natural Resources (DNR) was to prepare a sewer service area refinement report, which, according to DNR guidelines, must address both anticipated new sewered development and the preservation of important natural resource features in the Village.

Ron Worgull discussed the difference between the Aring property and the Reynolds property and questioned why the Aring property was to be allowed to be developed and not all of the Reynolds property. Mr. Rubin replied that the Aring property did not appear, on the basis of aerial photographic interpretation, to contain any prime elements of the natural resource base. He mentioned that the Commission's staff biologist would be meeting with the Village Administrator and any other interested persons on Thursday to field survey the Aring property and determine if any natural resource features remain on the property.

Trustee Benjamin stated that he agreed with the development restrictions on the top of the bluff on the Reynolds property.

Michael Muellner stated that he is a member of the Village Plan Commission and his vote had been one of the dissenting votes the night before. He felt that

SEWRPC was giving the Village an ultimatum: either approve the report or SEWRPC would not approve building on the Reynolds property. And, he felt that there was no way Mr. Reynolds could be compensated for the land they were taking from him.

Mr. Rubin noted that the DNR, not the Regional Planning Commission, is the regulatory agency responsible for granting the sewer extension to the Reynolds's brothers to enable the development of their property. He noted further that the Regional Planning Commission was, through the drafting of the sewer service area report, attempting to help resolve any differences between the DNR and the Reynolds brothers to effectuate the development of the Clarke's Woods Subdivision proposed by the Reynolds brothers. Finally, he noted that it was the Reynolds brothers through their attorney who had drafted the Declaration of Restrictions concerning Lots 4-8 of Block 1 of the Clarke's Woods Subdivision. Jerel Reynolds was asked by the Village President if he wished to make any comments. Mr. Reynolds stated that the reason he had won his court case with Waukesha County was because Waukesha County has no power over an incorporated area. He further stated that the State had adopted the plan in July but that the Governor did not sign it into law until December 12, 1979. He brought up the question of timing, noting he had submitted his plans in November 1979.

Richard Mathaus questioned that when an environmental corridor is created, should not all people adjacent to that corridor be notified of the public hearing. The Administrator replied yes, if they are going to be affected by it.

Robert Zoulek stated that he lives right up the street from the corridor and he never got a notice. Further discussion took place as to whether being adjacent to the corridor is the only criterion for one's being affected by its adoption.

John Gundrum stated that it was his understanding at the meeting the night before that the lines of the environmental corridor were established many years ago and that the property on Custer Avenue, including the street itself, was in the floodplain. He also said that the area on Custer Avenue was filled in much later than the lines show, that the lines are "way outdated."

Mr. Rubin, in reply, noted that prior to the fill being placed in the vicinity of Custer Avenue, the area may very well have been in the floodplain as well as the environmental corridor. Because of the placing of fill, however, the delineation of the floodplain, as well as the environmental corridor, was modified. He noted that the environmental corridor as delineated on Map 3 of the report was determined based upon the features shown on the Regional Planning Commission's 1980 aerial photographs.

Trustee Burkwald, in reference to the vegetation conservancy area shown on Map 5 of the report, noted that originally the DNR had recommended up to 300 feet for the environmental corridor, but that they had compromised, at the minimum, at 150 feet. He noted also that Reynolds had agreed to this.

President Pulvermacher closed the public hearing at 8:50 p.m. He noted that it is the recommendation of the Plan Commission that the Village Board delay action on the matter one week--that is, until the Village Board meeting of February 28, 1984, so that the impact of the Aring property could be determined. The Administrator added that the item was listed under "New Business" and would be formally considered when that point in the meeting occurred.

## Appendix B

### DECLARATION OF RESTRICTIONS

THIS DECLARATION is made this \_\_\_\_\_ day of \_\_\_\_\_, 1984 by ROBERT REYNOLDS and JEREL REYNOLDS (collectively the "Declarant").

#### Recitals

A. The Declarant is the owner of certain real property (the "Property") in Clarke's Woods Subdivision located in the Village of Butler, County of Waukesha, State of Wisconsin, which Property is more particularly described in Exhibit A attached hereto and incorporated herein and is shown on the Site Map attached hereto and incorporated herein as Exhibit B.

B. The Declarant desires and intends to impose upon the Property the covenants, conditions and restrictions hereinafter set forth in order to preserve, protect and maintain the existing topography and vegetation bordering the Menomonee River so that the development thereof conform to the requirements of the Regional Water Quality Management Plan for Southeastern Wisconsin - 2000, as amended, prepared by the Southeastern Wisconsin Regional Planning Commission, pursuant to the Federal Water Pollution Control Act, P.L. 92-500, as amended.

#### Declaration

The Declarant hereby declares that the Property is held and shall be held, sold, conveyed, encumbered, leased, used, occupied and improved, subject to the following limitations, covenants, conditions and restriction, which shall run with the Property and shall be binding on all parties having any right, title or interest in the Property or any part thereof, their heirs, successors and assigns.

1. Development. Within the portion of the Property shown by shading on Exhibit B, the following restrictions shall apply:

- a. No trees, shrubs, grasses or vegetation of any kind shall be cut down, destroyed, mutilated, moved, or disturbed in any way.
- b. No excavation, filling, grading or other alteration of the topography of the land shall be permitted to occur.
- c. No building, wall, fence, structure, or improvement of any kind, whether temporary or permanent, shall be constructed, erected, placed, or permitted to remain on such area.

2. Easements. Notwithstanding anything to the contrary contained in Paragraph 1 hereof, the owner or owners of Lots 5, 6 and 7 may grant to the Village of Butler, Waukesha County, Wisconsin, or agencies thereof a nonexclusive easement for access by the public and/or an easement for purposes of drainage of storm water, each of which may be located between the adjacent Lucille Lane and the land bordering such lots to the north and dedicated to the public for park purposes; provided, however, that such easements shall be no greater than twenty (20) feet in width.

3. Ownership. Lot 5 shall at all times be owned by the owner of Lot 4, and no interest in Lot 5, including a leasehold interest, shall be sold, transferred, or conveyed to any person or entity which does not simultaneously have the same interest in Lot 4. Lots 6 and 7 shall at all times be owned by the owner of Lot 8 and no interest in Lots 6 and 7, including a leasehold interest, shall be sold, transferred, or conveyed to any person or entity which does not simultaneously have the same interest in Lot 8. There shall be no further division or subdivision or replatting of the Property.

4. Term. Except as otherwise provided herein, this Declaration shall run with and bind the land and inure to the benefit of and be enforceable by the Village of Butler, Waukesha County, Wisconsin, its successors and assigns, for a period of ninety-nine (99) years from the date this Declaration is recorded. After the expiration of such period, this Declaration shall be automatically renewed for successive periods of ten (10) years, unless there is recorded an instrument executed by the Village of Butler, for the purpose of terminating this Declaration, in which case this Declaration shall terminate at the end of the initial or renewal term which next expires following the recording of such instrument of termination.

5. Enforcement. Enforcement of these covenants and restrictions shall be by a proceeding at law or in equity against any person or persons violating or attempting to violate any covenant or restriction, either to restrain the violation or to recover damages. Failure by the Village of Butler to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

6. Severability. Invalidation of any one or more of these covenants or parts thereof by judgment or court order shall in no way affect any of the other provisions, which other provisions shall nevertheless remain in full force and effect.

Executed by the Declarant as the date first written above.

STATE OF WISCONSIN )  
 )  
 COUNTY OF MILWAUKEE )

\_\_\_\_\_  
 Robert Reynolds

\_\_\_\_\_  
 Jerel Reynolds

Personally came before me this \_\_\_\_\_ day of \_\_\_\_\_, 1984, the above-named Robert Reynolds and Jerel Reynolds, to me known to be the persons who executed the foregoing instrument, and acknowledged the same.

This instrument was drafted by  
 Robert A. Teper of  
 Herz, Levin, Teper,  
 Summer & Croysdale, S.C.  
 777 East Wisconsin Avenue  
 Milwaukee, Wisconsin 53202  
 (414) 273-4333

\_\_\_\_\_  
 Notary Public, State of Wisconsin  
 My Commission: \_\_\_\_\_

EXHIBIT A

Lots 4 through 8, inclusive, in Block 1 of Clarke's Woods Subdivision, being a part of the NE 1/4 of the SW 1/4 and part of the NW 1/4 of the SE 1/4 of Section 36, Township 8 North, Range 20 East, in the Village of Butler, Waukesha County, State of Wisconsin.

EXHIBIT B

