



WISCONSIN DEPARTMENT OF ADMINISTRATION

**REVIEW of the COOPERATIVE PLAN
under Section 66.0307 Wis. Stats.**

between the

**TOWN OF OCONOMOWOC and TOWN OF MERTON
Waukesha County**

July 5, 2022

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STATE OF WISCONSIN
DEPARTMENT OF ADMINISTRATION

Tony Evers, Governor
Kathy Blumenfeld, Secretary-Designee
Dawn Vick, Division Administrator

This determination constitutes the Department's review of the proposed cooperative plan between the Town of Oconomowoc and Town of Merton under s. 66.0307 Wis. Stats. The Department is charged with reviewing cooperative plans for compliance with public interest standards set forth in s. 66.0307(5)(c) Wis. Stats.

In summary, it is the DETERMINATION OF THE DEPARTMENT OF ADMINISTRATION that when considering the proposed cooperative plan under Section 66.0307(5), Wis. Stats.:

Standard 1, Content of Cooperative Plan Sufficiently Detailed – Not Met

Standard 2, Cooperative Plan Consistent with Comprehensive Plans and State and Local Laws and Regulations – Met

Standard 3, Adequate Provision for Municipal Services – Met

Standard 4, Provision for Affordable Housing – [Repealed & Inapplicable]

Standard 5, Compactness of Plan Territory – Met

Standard 6, Planning Period is Consistent with Cooperative Plan – Not Met

The facts and analysis supporting these findings are discussed in the body of this determination. The Determination of the Department of Administration is as follows:

Pursuant to s. 66.0307(5)(d) Wis. Stats., the Department is returning the proposed cooperative plan to the Towns of Oconomowoc and Merton with the recommendation that it be re-submitted with revisions as discussed in the body of this determination.

The Department believes that this cooperative plan, if revised, may constitute a cooperative plan that complies with each of the above statutory standards. According to s. 66.0307(5)(d) Wis. Stats., the Communities have 90 days from today's date in which to resubmit their revised cooperative plan to the Department.

Dated this 5th day of July 2022.

Dawn Vick
Administrator, Division of Intergovernmental Relations

NOTICE OF RIGHT TO APPEAL

This Notice sets forth the requirements and procedures for obtaining review for those persons who wish to obtain judicial review of the attached decision of the Department. Per s. 66.0307(9), Wis. Stats., decisions of the Department are subject to judicial review under s. 227.52. Per s. 227.53 any person aggrieved by a decision of the Department is entitled to review in circuit court. Per s.227.53 (1) (a) 1., proceedings for review are instituted by serving a petition therefor upon the agency, either personally or by certified mail, and by filing the petition in the office of the clerk of the circuit court for the county where the judicial review proceedings are to be held. Per s. 227.53 (1) (a) 2m., an appeal must be filed and served within 30 days after mailing of the decision by the agency. Per s. 227.53 (1) (b), the petition shall state the nature of the petitioner's interest, the facts showing that petitioner is a person aggrieved by the decision, and the grounds specified in s. 227.57 upon which petitioner contends that the decision should be reversed or modified. Any petition for judicial review shall name the Department of Administration as the Respondent. Petitions for review should be served on the Department's Secretary, Designee, Kathy Blumenfeld. The address for service is:

c/o DOA, Municipal Boundary Review
101 East Wilson Street, 9th Floor
PO Box 1645
Madison, WI 53701

Persons desiring to file for judicial review are advised to closely examine all provisions of ss. 227.52, 227.53 and 227.57 Wis. Stats. to ensure strict compliance with all requirements. The summary of appeal rights in this notice shall not be relied upon as a substitute for the careful review of all applicable statutes, nor shall it be relied upon as a substitute for obtaining the assistance of legal counsel.

Executive Summary

In accordance with s. 66.0307(5) Wis. Stats., the Wisconsin Department of Administration (Department) returns the *Cooperative Plan between the Town of Merton and Town of Oconomowoc* (Cooperative Plan).

The primary purposes of this Cooperative Plan are:

- Transfer several isolated Town of Oconomowoc parcels to the Town of Merton.
- Establish permanent boundaries between the Communities.
- Provide sanitary sewer service to a portion of the Town of Merton.

The Department finds that this Cooperative Plan currently does not meet two of the statutory criteria. However, the Department believes that with additional clarifying information, as described in this determination, the Cooperative Plan may comply with all the statutory criteria. Therefore, under authority in s. 66.0307(5)(d) Wis. Stats. the Department is returning the proposed Cooperative Plan to the Communities with a recommendation that it be re-submitted to include the needed additional information. According to s. 66.0307(5)(d), the communities have 90 days from today's date in which to resubmit their revised Cooperative Plan to the Department.

Public Hearing, Resolutions, Referenda and other Procedural Matters

Before a cooperative plan is submitted to the Department, several procedural steps must occur. These are:

- Joint initiating resolutions passed by each participating municipality authorizing its governing body to work to negotiate and develop the plan;
- A joint public hearing to receive comments from the public and other governmental bodies; and
- Resolutions adopted by each municipality to approve a final version of the cooperative plan and forward it to the Department for review.

The following procedural steps may occur:

- An advisory referendum; and
- A public hearing held by the Department.

Authorizing resolutions were passed by the Towns of Oconomowoc and Merton on October 7th and 9th, 2019 respectively and are provided at Exhibit K of the Cooperative Plan. As required by s. 66.0307(4)(a) Wis. Stats., these resolutions were distributed to the neighboring municipalities and other area jurisdictions shown at Exhibit K.

A joint public hearing for the Cooperative Plan was held on December 20, 2021 by the Communities as required by s. 66.0307(4)(b) Wis. Stats. A transcript of this hearing is provided at Exhibit N. There were no public comments received.

The Towns of Oconomowoc and Merton adopted resolutions approving the Cooperative Plan on February 21st and 24th, 2022 respectively, provided at Exhibit P. The Communities then forwarded the Cooperative Plan to the Department for its statutory review on April 6, 2022.

No area residents requested that an advisory referendum on the Cooperative Plan be held.

No individuals requested the Department to hold a public hearing on the Cooperative Plan under s. 66.0307(5)(b), Wis. Stats.

Statutory Review Standards

A cooperative plan shall be approved by the Department if the Department determines that each of the review criteria in s. 66.0307(5)(c), Wis. Stats., are met. The following paragraphs describe how the Cooperative Plan relates to these review criteria. It is important to understand that this review document is not a complete restatement of the Plan. Those wanting to learn specific details, provisions, nuances, and conditions should look to the text of the Cooperative Plan itself, which is available from the communities as well as on the Department of Administration's website at <http://doa.wi.gov/municipalboundaryreview>.

(1) The content of the plan under sub. s. 66.0307(3)(c) to (e) is sufficient to enable the Department to make the determinations under subs. 2 to 5m. s. 66.0307(5)(c)1, Wis. Stats.

The following are the fundamental components of this Cooperative Plan:

- Term – the Communities intend that the Cooperative Plan will continue into perpetuity. The Plan appears to take effect upon Department approval, however this is not expressly stated. To avoid potential confusion and ambiguity, the Communities should expressly provide a date upon which the Cooperative Plan becomes effective.
- Transfer of Territory –two parcels, shown by Exhibit B, are to transfer from the Town of Oconomowoc to the Town of Merton. However, no information is

provided about when these parcels will transfer or how. For example, are the landowners to file annexation petitions? Will these parcels attach under s. 66.0307(10), Wis. Stats.? By which specific statutory mechanism will these parcels be transferred? The Communities should provide specifics to avoid potential confusion and ambiguity.

- Sewer Service – a small area of Merton, shown by the map at Exhibit F, may receive sewer service from Oconomowoc’s sanitary district in the future.
- Joint Planning – the Cooperative Plan creates a Joint Planning Area (JPA), shown by Exhibit C and a Joint Planning Committee (JPC) to oversee this area.
- Incorporation – should one or both Towns ever incorporate, both Towns agree to waive their respective annexation and extraterritorial authorities.
- Dispute Resolution - the Cooperative Plan establishes a dispute resolution process.

The Cooperative Plan should clearly state when it takes effect. Section 1.3 implies that the Plan takes effect upon Department approval, however this should be made clear and unambiguous. Additionally, the Plan should clearly state when and how the two specified parcels are to transfer to Merton because this lack of specifics may lead to confusion when it comes time for them to be transferred. Because of this needed information, the Department is unable to find that the Cooperative Plan is sufficiently detailed and therefore the standard in s. 66.0307(3)(c)1. Wis. Stats. is not met.

(2) Is the cooperative plan consistent with each participating municipality’s comprehensive plan and with current state laws, municipal ordinances and rules that apply to the territory affected by the plan? s. 66.0307(5)(c)2 Wis. Stats.

Oconomowoc and Merton each have an adopted comprehensive plan, both adopted in 2009 and both incorporated into Waukesha County’s development plan. Consistency of the Cooperative Plan with Oconomowoc’s comprehensive plan is shown via the following comprehensive plan objectives:

- Objective - enter into boundary agreements with municipal neighbors to establish shared services and permanent boundaries.
- Objective – preserve open space, agricultural lands, environmental corridors, and encourage cluster type developments. This Cooperative Plan supports these objectives by protecting boundaries and providing municipal sewer and water to some areas of Merton.

Consistency of the Cooperative Plan with Merton’s comprehensive plan is shown via the following comprehensive plan objectives:

- Objective - enter into boundary agreements with municipal neighbors to establish shared services and permanent boundaries.
- Objective – preserve open space, agricultural lands, environmental corridors, and encourage cluster type developments. This Cooperative Plan supports these objectives by protecting boundaries and providing municipal sewer and water to some areas of Merton.

The Cooperative Plan in Section 1.8 states that it is fully consistent with current state and federal laws, county shoreland zoning ordinances, municipal regulations and administrative rules that apply to the territory affected by the Plan.

Neither Waukesha County nor SEWRPC submitted their comment letters as required by s. 66.0307(4)(c), Wis. Stats. The Communities should obtain a comment letter from at least one of these jurisdictions on how the Cooperative Plan impacts regional plans.

For the foregoing reasons, the Department finds that the Cooperative Plan is consistent with each community’s comprehensive plan and with all current state laws, municipal regulations and administrative rules and that the standard in s. 66.0307(5)(c)(2) Wis. Stats. is therefore met. However, the Communities should obtain the required comment letter from either Waukesha County or SEWRPC.

(3) Adequate provision is made in the cooperative plan for the delivery of necessary municipal services to the territory covered by the plan. s. 66.0307(5)(c)(3), Wis. Stats.

Generally, each Community will continue to serve the residents within their respective jurisdictions the same type and level of services as currently provided. However, the Cooperative Plan indicates that upon approval, services to the two transferred parcels will switch from Oconomowoc to Merton. This includes zoning and building permits, septic regulations, and stormwater management.

The Cooperative Plan creates a Joint Planning Area (JPA), shown by Exhibit C, which is an area whose development and redevelopment impacts both Communities. To oversee the JPA the Cooperative Plan establishes a Joint Planning Committee (JPC). The JPC is comprised of two voting members from Merton and two from Oconomowoc. Within the JPA the Communities agree to cooperate on comprehensive land use planning issues.

This Cooperative Plan also re-affirms existing intergovernmental agreements regarding sewer service to a small area of Merton shown by the map at Exhibit F. The Town of Merton does not own or operate a public water supply system or a sanitary/utility district. However, existing intergovernmental agreements provide that the Town of

Oconomowoc Utility District No. 1 agrees to accept wastewater from a small area of Merton.

Finally, the Communities agree to cooperate on snowplowing, repair, and maintenance for several roads bordering the Communities, shown by the map at Exhibit I.

For the foregoing reasons, the Department finds that adequate provision has been made for the delivery of necessary municipal services to the agreement territory and that the standard in s. 66.0307(5)(c)3, Wis. Stats., is met.

(5) The shape of any boundary maintained or any boundary change under the cooperative plan is not the result of arbitrariness and reflects due consideration for compactness of area. Considerations relevant to the criteria under this subdivision include quantity of land affected by the boundary maintenance or boundary change and compatibility of the proposed boundary maintenance or boundary change with natural terrain including general topography, major watersheds, soil conditions and such features as rivers, lakes and major bluffs. s. 66.0307(5)(c)(5), Wis. Stats.

The map at Exhibit F shows that the two parcels to be transferred to Merton are already much more compact and homogenous to Merton than they are to Oconomowoc because they are physically attached to Merton and physically separated from Oconomowoc by Okauchee Lake. These two parcels currently function as isolated Town of Oconomowoc islands. This Cooperative Plan would dramatically improve the compactness of these parcels by transferring them to Merton. Therefore, the Department finds that the standard in s. 66.0307(5)(c)5., Wis. Stats. is met.

(6) Any proposed planning period exceeding 10 years is consistent with the plan. s. 66.0307(c)6 Wis. Stats.

The Communities intend that the Cooperative Plan will continue into perpetuity. However, as mentioned the Plan's effective date is not expressly stated. The Communities should clearly provide an effective date, otherwise when the Plan begins is potentially confusing and ambiguous.

Additionally, the Communities may wish to reconsider or clarify the Cooperative Plan's language regarding 'perpetuity' because perpetuity is a very long time, particularly given that merely transferring the two parcels would seem to require considerably less time than perpetuity.

Because specific information is needed regarding an effective date upon which the Cooperative Plan begins or commenced, the Department finds that the standard in s. 66.0307(5)(c)6, Wis. Stats., is not met.