



WISCONSIN DEPARTMENT OF ADMINISTRATION

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

between the

**TOWNS OF CLAYTON and WINCHESTER
WINNEBAGO COUNTY**

July 16, 2020

Blank Page



**STATE OF WISCONSIN
DEPARTMENT OF ADMINISTRATION**

Tony Evers, Governor
Joel Brennan, Secretary
Dawn Vick, Division Administrator

This determination constitutes the Department's review of the proposed cooperative plan between the Towns of Clayton and Winchester 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 – Not Met

Standard 3, Adequate Provision for Municipal Services – Not Met

Standard 4, Provision for Affordable Housing – [Repealed & Inapplicable]

Standard 5, Compactness of Plan Territory – Not Met

Standard 6, Planning Period is Consistent with Cooperative Plan – 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 Clayton and Winchester with the recommendation that it be re-submitted with the revision 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 16th day of July 2020,

Dawn Vick
Administrator, Division of Intergovernmental Relations

NOTICE OF APPEAL RIGHTS

This Notice sets forth the requirements and procedures for obtaining judicial review of the attached decision of the Department. Any person aggrieved by a decision of the Department can seek judicial review of the decision under Wis. Stats. §§ 66.0307(9) and 227.52, *et seq.* A petition for judicial review must be filed in the Circuit Court within 30 days of the date of this decision. In addition, a copy of the petition for judicial review must also be served on the Department either personally or by certified mail within 30 days of the date of the decision. A petition for judicial review shall name the Department of Administration as the Respondent. Petitions for judicial review should be served on the Department's Secretary, Joel Brennan, at the following address:

Secretary Joel Brennan
Wisconsin Department of Administration
c/o DOA, Municipal Boundary Review
101 East Wilson Street, 9th Floor
PO Box 1645
Madison, WI 53701

Persons filing a petition for judicial review are advised to closely examine all provisions of Wis. Stat. §§ 227.52 and 227.53 to ensure strict compliance with the statutory requirements. The summary of appeal rights in this notice should not be relied upon as a substitute for the careful review of all applicable statutes, nor should it be relied upon as a substitute for obtaining the assistance of legal counsel.

Executive Summary

Pursuant to s. 66.0307(5)(a), Wis. Stats., the Wisconsin Department of Administration (Department), has received the *Intergovernmental Cooperative Plan between the Town of Clayton and Town of Winchester* (Cooperative Plan).

In 2018 the Town of Clayton began the process for incorporating a portion of its territory as the Village of Larson. This Cooperative Plan is limited in scope and primarily intended to mitigate any negative impacts from Clayton's potential incorporation. Specifically, upon incorporation the new Village of Larson agrees not to annex or attach Town of Winchester territory, or exercise extraterritorial authority or official mapping controls. In exchange, Winchester agrees to support Clayton's incorporation effort. The Cooperative Plan would also transfer ownership of the existing Larsen-Winchester Sanitary District to the prospective Village of Larson.

The Cooperative Plan process was commenced in 2019, with authorizing resolutions passed by the Town of Winchester and Town of Clayton (Communities) on July 15 and 17, 2019, respectively.

On October 23, 2019, the Town of Clayton held the required joint public hearing at the Clayton Town Hall. No public comments were received for the proposed Cooperative Plans. Approval resolutions were passed by Winchester on January 6, 2020 and January 15, 2020 by Clayton. On April 17, 2020, the Communities forwarded the Cooperative to the Department for review. No public hearing before the Department was held or requested pursuant to s. 66.0307(5)(b), Wis. Stats.

The Department is unable to determine whether the Cooperative Plan complies with all of the statutory standards. As a result, the Department is returning the Cooperative plan to the Towns of Clayton and Winchester (Communities) with the recommendation that it be re-submitted with this needed information. The Communities have 90 days from today's date in which to resubmit a revised cooperative plan to the Department.

Approval Criteria Applicable to the Department

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., is met. Nothing in the statutes authorizes the Department to waive any of these requirements.

The following paragraphs describe how these review criteria apply to the Cooperative Plan. 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 5. s. 66.0307(5)(c)1., Wis. Stats.***

As mentioned, this Cooperative Plan is limited in scope and requires little in terms of action items. The few provisions that the Plan does contain are generally sufficiently detailed, complete, and free of ambiguity. Two exceptions are lack of information provided to show consistency between the Cooperative Plan and the Communities' comprehensive plans, and lack of specificity about whether the boundary line between the Communities is maintained during the planning period. Because of this needed information, the Department finds that the standard in s. 66.0307(5)(c)1., Wis. Stats. is not met.

Additionally, since the intent of this Cooperative Plan is to maintain the boundaries between the Communities should Clayton or a portion of Clayton incorporate as a village, the Communities may want to strengthen the Plan's successor clause in Section 15(h) to include the possibility of a new village.

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

The Cooperative Plan states that both Communities have comprehensive plans but provides no specifics to show how or whether the Cooperative Plan is consistent with these plans. If consistency does not exist, then the Communities may need to amend their comprehensive plans.

The Cooperative Plan 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. East Central Wisconsin Regional Planning Commission (ECWRPC) submitted their required comment letter on July 13th, 2020 finding that the Cooperative Plan is consistent with regional plans and helps promote cooperation between local communities.

Because no information has been provided to show consistency between the Cooperative Plan and the Communities' comprehensive plans, the Department finds that the standard in s. 66.0307(5)(c)2., Wis. Stats. is not met.

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

Section 10 states that each Community will be responsible for providing municipal services to residents within its boundaries. As a result, this Plan generally contemplates no shared services.

The parties do intend to transfer ownership and operation of the existing Larsen-Winchester Sanitary District, whose boundaries are shown at Exhibit C, to the prospective Village of Larsen immediately upon the effective date of this Plan. Additionally, the Village of Larsen will continue to serve Winchester territory within the sanitary district's boundaries. Larsen will also extend service to Winchester landowners as the district's boundaries are amended over time and should adequate capacity exist. Larson will not condition this service on annexation.

A potential problem with transferring ownership and operation of the sanitary district to the prospective Village of Larson upon the effective date of this Cooperative Plan is that the Village of Larson will not yet exist. As a result, there may not be a Village of Larson to accept transfer of the sanitary district upon this Cooperative Plan's effective date. The Communities should revise this provision to correct this potential problem.

The purpose of the Cooperative Plan is not generally related to services. However, because the one provision related to services – transfer of the sanitary district - is potentially problematic as designed, the Department finds that the standard in s. 66.0307(5)(c)3., Wis. Stats., is not 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 Cooperative Plan prohibits annexation of Winchester territory by the prospective Village of Larson, which leads one to infer that boundaries between the Communities will be maintained under s. 66.0307(2)(d), Wis. Stats. Furthermore, the Cooperative Plan states that boundaries will “remain the same or substantially the same as they currently are.” However, the Plan needs to expressly state whether it maintains the boundary between the two Communities for the duration of the planning period.

The Cooperative Plan makes no changes to an already regular and compact municipal boundary line. However, this standard requires the Department to evaluate the shape

of the boundaries that are “changed” or “maintained” and more information is needed to specify whether the Cooperative Plan does maintain the boundary between the two Communities. Inferring that the boundary is maintained is not enough to meet the standard. As a result, the Department finds the standard in s. 66.0307(5)(c)5., Wis. Stats. is not met.

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

The Cooperative Plan takes effect upon Department approval and continues in effect for 50-years for all provisions. The Communities state that 50-years are needed to implement transfer of the sanitary district and continue service to Winchester landowners. Also, 50 years was the negotiated duration that the prospective Village of Larson is prohibited from exercising annexation, extraterritorial jurisdiction, and official mapping controls within the Winchester. The Cooperative Plan provides that upon expiration of the 50-year planning period, the Plan will automatically renew for two additional 25-year periods unless either Community gives prior written notice not to renew. The Department recommends that this provision be revised to require proactive steps to renew the Cooperative Plan, rather than have renewal occur automatically. The Department has observed Wisconsin communities whose intergovernmental agreements renewed without their being aware of it, and without their desiring renewal, due to this type of automatic renewal provision. In this case, where the Plan’s duration is long at 50-years, the problems of unwanted automatic renewal may be greater as elected officials and staff may forget the existence of the Cooperative Plan.

Because the planning period is consistent with of Cooperative Plan’s terms, the Department finds that the standard in s. 66.0307(5)(c)6., Wis. Stats. is met. However, the Department recommends that the automatic renewal provision be revised to require proactive steps to renew the Cooperative Plan.