



WISCONSIN DEPARTMENT OF ADMINISTRATION

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

between the

**VILLAGE OF SUSSEX and TOWN OF LISBON
Waukesha County**

April 26, 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 Village of Sussex and Town of Lisbon 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 – 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Standard 4, Provision for Affordable Housing – [Repealed & Inapplicable]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 – 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 of Administration hereby determines that the proposed cooperative plan is APPROVED.

Amendments or revisions to the plan can only occur with the approval of the communities, and with the concurrence of the Wisconsin Department of Administration or any successor agency granted the authority to administer the provisions of s. 66.0307(8), Wis. Stats.

Dated this 26th day of April 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, 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) approves the *Intergovernmental Cooperative Plan Between the Village of Sussex and the Town of Lisbon* (Cooperative Plan).

In developing this Cooperative Plan, the Village of Sussex and Town of Lisbon (Communities) successfully overcome many years of disagreement and costly litigation. The purposes of this Cooperative Plan are:

- Updates and replaces the Communities' previous intergovernmental agreements entered into in 2001 (Boundary Stipulation Agreement) and 2020 (2020 Intergovernmental Agreement);
- Expands Village sewer and water service to some Town areas;
- Adjusts municipal boundary lines between the Communities so as to eliminate jagged and irregular sections of their shared boundaries;
- Designates 'Village Gateways', and through agreed-upon planning and development guidelines, work to improve these important entrances into Sussex;
- Avoids future disputes, improves service efficiency, cooperates with land use planning, and avoids sprawl development, among other purposes.

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 Village on June 25, 2019 and by the Town on September 14th, 2020 and are provided in Exhibits D and E 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.

A joint public hearing for the Cooperative Plan was held on November 30, 2021 by both Village and Town as required by s. 66.0307(4)(b) Wis. Stats. A transcript of this hearing is provided in Exhibit T. Many Town residents voiced strong opposition to the Cooperative Plan. They reside in territory which is proposed to immediately transfer to the Village of Sussex. These residents pointed out the significant financial hardship associated with being required to connect to Sussex's sewer and water system. Many have private wells and sanitary systems which yield high quality water and remain in good condition, meeting Department of Natural Resources and Waukesha County code requirements. Being forced to connect to Sussex's sewer and water system may mean these residents will need to pay tens of thousands of dollars in assessments and closure of their private systems for services they do not want or need.

Following the joint public hearing, the Town and Village did not make any changes to the Cooperative Plan, and instead adopted resolutions approving the Cooperative Plan on January 24 and 25, 2022 respectively, provided in Exhibits V and W. The Communities then forwarded the Cooperative Plan to the Department for its statutory review on January 26, 2022.

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

A resident did request the Department to hold a public hearing on the Cooperative Plan under s. 66.0307(5)(b), Wis. Stats. The Department held this requested public hearing on March 17, 2022 at the Richard Jung Fire Station in Lisbon. Department staff received testimony from the Communities on how the Cooperative Plan meets each of the Departments statutory review standards. Testimony from many residents reiterated the issues they had previously made that being forced to connect immediately to Sussex sewer and water services represents significant financial hardship with costs potentially reaching tens of thousands of dollars.

The decision to immediately transfer territory and residents to Sussex was made by Sussex and Lisbon as part of their negotiation of this Cooperative Plan. While this is a local decision which falls outside of the Department's statutory review standards in s. 66.0307(5)(c), Wis. Stats., the Department has approved Cooperative Plans that have delayed transfer of territory and residents for a decade or longer to give residents and landowners time to plan and adjust. In fact, Sussex and Lisbon did give one resident almost 10 years in which to remain in the Town before transferring. Because the underlying decision to adjust territory between communities is a local decision, and outside of the Department's statutory review standards, the residents who are negatively impacted by this Cooperative Plan may wish to investigate the availability of avenues of relief outside of judicial review (Wis. Stat. 227.52).

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 Cooperative Plan takes effect upon Department approval and the boundaries resulting between the Communities are to remain in effect for perpetuity.
- Transfer of Territory – immediately following approval by the Department, certain designated territory shown in Exhibits F and G of the Cooperative Plan transfer from Lisbon to Sussex, and from Sussex to Lisbon. As mentioned, one parcel transfers to the Village if title is sold or upon December 31, 2031, whichever occurs earlier.
- Village Sewer & Water Service – the Village agrees to extend its sewer and water service to certain designated areas of Lisbon, as shown by the map in Exhibit N.
- Jurisdictional Transfer of Roads – the Cooperative Plan identifies numerous roadways and railways which will be jurisdictionally transferred between Lisbon and Sussex.
- Waiver of Extraterritorial Authority – Sussex agrees to forever waive its extraterritorial plat approval and zoning authority within Lisbon.
- Village Gateways – the Cooperative Plan identifies four *Village Gateway* areas that are, and will continue to be, located within Lisbon. The Communities agree that all development within these Gateways will be subject to agreed upon design standards for a period of 20 years.
- Incorporation – Sussex agrees to support future efforts by Lisbon to incorporate as a city or village.

- Dispute Resolution - the Cooperative Plan establishes a dispute resolution process.

The above information, along with other information included in the Cooperative Plan, provides sufficient detail to enable the Department to find that the standards in s. 66.0307(3)(c)1. Wis. Stats. are 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.

Sussex and Lisbon each have an adopted comprehensive plan. Consistency of the Cooperative Plan with Sussex's comprehensive plan is shown via the following plan provisions:

- Shared services – Sussex should continue to work cooperatively with neighboring communities such as Lisbon to explore opportunities for additional shared services to improve the quality of services and their cost-effectiveness.
- Police protection – a current area of successful intergovernmental cooperation identified is police protection, where Sussex houses the Sussex Public Safety Building for Waukesha County to serve Sussex, Village of Merton, and Town of Lisbon. From this building Sussex also processes administrative police tickets for five local communities, including Lisbon.
- Fire protection – Sussex should continue to participate with its municipal neighbors in the current regional study of fire service sharing opportunities.
- Stormwater management – Sussex should work with neighboring municipalities and Waukesha County to develop stormwater management plans based on watershed areas, because stormwater is an issue that crosses many different municipal and jurisdictional boundaries. Sussex did help develop a multi-jurisdictional stormwater management plan in 1997 with Lannon, Menomonee Falls, and Lisbon. This plan was updated in 2011 and will need additional updates in the future.
- Economic development – as Sussex, Lisbon, and Menomonee Falls continue to grow, cooperating economically can result in synergy within the region to enable retailers and businesses to be more successful.
- Sewer and water service – Sussex's regional wastewater treatment plant serves not only Sussex but also parts of Menomonee Falls, Lannon, a school district,

and Lisbon, which the comprehensive plan states is a successful example of intergovernmental cooperation between the communities.

Consistency of the Cooperative Plan with Lisbon's comprehensive plan is shown via the following aspects:

- Stormwater management – Lisbon should work with neighboring municipalities and Waukesha County to develop stormwater management systems based on watershed areas which by their nature cross over municipal boundary lines.
- Emergency services - Lisbon should work with other municipalities on a county-wide basis to develop emergency services and facilities to maximize response time and eliminate inefficiencies.

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.

In its comment letter the Waukesha County Department of Parks and Land Use indicates support for the Cooperative Plan, stating that the proposed boundary changes appear compact and logical and that the Plan builds on the Communities' prior intergovernmental agreements.

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.

(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.

In general, the Cooperative Plan does not impact how services are provided. In general, each community will continue to provide the same type and level of services to its residents as it currently provides. The Cooperative Plan lists the type and level of services that each community currently provides to its residents.

However, Cooperative Plan provisions may make changes to transportation and sewer and water services.

Regarding transportation, the Plan identifies numerous roadways and railways which Lisbon and Sussex agree to transfer jurisdictionally between the Communities, with some streets and roads transferring to Lisbon and some to Lisbon. The Plan also

addresses the costs of improvements associated with these transferred roadways, such as sidewalks.

Regarding sewer service, currently Lisbon cooperates with Sussex to enable Lisbon Sanitary District No. 1 to provide sewer service to some Town areas via past intergovernmental agreements between the Communities developed in 1992 and 2001. As part of this Cooperative Plan sewer service will be expanded to other Town areas. The Communities developed an intergovernmental agreement - *Agreement for the Conveyance of Wastewater (2020)* – which is incorporated into the Cooperative Plan as Exhibit L to address specific sewer service details. The Communities anticipate that the agreement at Exhibit L will be signed and become effective upon approval of this Cooperative Plan.

Regarding water service, this Cooperative Plan will enable Lisbon to receive water service for the first time. The Communities developed an intergovernmental agreement - *Agreement for the Provision of Water Service (2020)* - which is incorporated into the Cooperative Plan as Exhibit M to address specific water service details. The Communities anticipate that the agreement at Exhibit M will be signed and become effective upon approval of this Cooperative Plan.

The Cooperative Plan does not make changes to other core services Lisbon and Sussex provide to their residents, such as Fire/EMS, police protection, public health, public works, parks and recreation, planning and development, and administrative services, among others.

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.

Exhibit H, which shows the boundaries between the Communities following the territory transfers, indicates how these boundaries are made more compact and homogenous because of this Cooperative Plan. For example, numerous jagged and uneven areas of Town territory will be transferred to Sussex. Some irregular areas do remain, however generally the boundaries between Sussex and Lisbon will become more compact and homogenous because of this Cooperative Plan. As a result, 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 Cooperative Plan takes effect upon Department approval and the boundaries resulting between the Communities, as well as Sussex agreeing not to exercise its extraterritorial jurisdiction within Lisbon, are intended to remain in effect for perpetuity. Required joint planning within the *Village Gateway* areas remains in effect for 20 years.

The Department finds this arrangement to be appropriate and consistent with the Cooperative Plan's provisions. Therefore, the standard in s. 66.0307(5)(c)6, Wis. Stats., is met.