Recommendation on Future Governance of the Town of Lisbon

- Prepared by the Town of Lisbon Long Range Vision Group

Final Draft

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Town of Lisbon

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I

I. Introduction

I

II

II. Boundary Agreements

Three different State of Wisconsin statutes pertain directly or indirectly to municipal boundary agreements. These statutes are as follows:

- Stipulations and orders (Section 66.0225) – This statute outlines the procedures for two municipalities who are engaged in legal proceedings over the validity of an annexation, incorporation, consolidation or detachment to enter into a written stipulation to settle the litigation and determine a common boundary line.

- General agreements (Section 66.0301) – This statute outlines the authority of municipalities to enter into agreements to contract for joint municipal services. Some have questioned whether this section actually authorizes boundary agreements, especially in light of the fact that boundary agreements are now directly authorized under other statutes.

- Cooperative boundary agreements (Section 66.0307) – This section establishes a procedure for changing or maintaining municipal boundaries by agreement. These agreements can also pertain to other provisions related to the sharing of municipal services.

Section 66.0225 stipulations are intended to resolve ongoing legal conflicts. Section 66.0225 agreements may also lie on questionable legal footing. In particular, any provisions in these agreements that restrict future annexations or prevent a municipality from contesting the incorporation of a neighbor may not be valid if challenged in court. A primary reason for this is that court stipulated agreements often do not allow for any public notice or input. Additionally, these agreements often include provisions for which state statutes do not provide any authority under this type of agreement. In fact, several boundary stipulations developed under Section 66.0205 have been subsequently ruled invalid by circuit courts.

Agreements under Section 66.0301 generally relate to cooperation in regards to specific municipal services, and there is some question regarding whether or not this section actually authorizes boundary agreements.

Section 66.0307 is the one statute that specifically authorizes the cooperative negotiation of boundary agreements between municipalities. For this reason, the Town of Lisbon should focus on establishing boundary agreements under this section of state statutes and, therefore, that is the focus of this report.

II

Statutory Background on Section 66.0307 Cooperative Boundary Agreements

Section 66.0307 was adopted in 1992 in order to provide a method for municipalities to cooperatively negotiate and adopt legal, binding plans for maintaining or changing the natural and developed uses of a combination of town, village and city territory for a period of 10 years or more. Prior to this time, the existing state law allowed any two municipalities whose boundaries were shared at any point to set the common boundary between them. This could be accomplished via two methods: the context of litigation or outside the context of litigation. The existing procedures were subject to legal questions and did not provide for the neutral review of agreements. A special committee recommended that the authority to establish agreements outside the context of litigation be replaced by the procedure outlined in Section 66.0307. The new statute was developed with several primary goals in mind:

- Cooperation – The new procedure is premised on local government cooperation
- Certainty – The new procedure specifies what the parties can agree to and the binding nature of the agreement
- Planning – The parties involved are required to develop a plan in connection with boundary changes or boundary freezes
- Public Participation – A procedure is provided for developing a cooperative plan, including notice and public hearing provisions and an option advisory referendum
- Wisconsin Department of Administration (DOA) review and approval

Features of Section 66.0307 Cooperative Boundary Agreements

Cooperative boundary agreements established pursuant to Section 66.0307 provide flexibility for municipalities in regards to several issues. Any combination of cities, villages and/or towns may enter into an agreement. The involved parties are then able to negotiate terms related to the following issues:

- Determining the size of the area to be included
- Determining the services to be provided
- Deciding whether municipal boundaries remain static or change over time
- Establishing the timing of facility installations and financing arrangements if necessary
- Determining the length of time the agreement is to remaining in force (must be at least 10 years)

Agreements established under Section 66.0307 generally last for a period of 10 to 20 years. In some cases, parties to an agreement have included language stipulating that the agreement will remain in effect in perpetuity. New municipal administrations cannot unilaterally dissolve or amend these agreements without the consent of all governmental units involved.

Annexations initiated by property owners are no longer possible following a boundary agreement. Annexations (properly known as attachments) can then occur only as specified in the agreement.

State statutes require the following elements to be addressed in a cooperative boundary agreement:

- Duration of agreement
- Current land uses
- Proposed boundary changes
- Conditions that may trigger future boundary changes
- Physical plan for the agreed-upon area
  - Including public improvements
- Proof of consistency with existing plans and ordinances
- Environmental, economic and social impact analyses
- Plan for providing public services to area
- Summary of public comments

Procedure for Section 66.0307 Cooperative Boundary Agreements

The following is an outline of the process for establishing cooperative boundary agreements pursuant to Section 66.0307:

Step 1: Participating municipalities approve resolutions authorizing participation in the preparation of a cooperative boundary plan.

The municipalities must attest by affidavit that authorizing resolutions have been forwarded to the following agencies within 5 days of approval by the local governing body:

- Department of Administration (DOA)
- Department of Natural Resources (DNR)
- Department of Transportation (DOT)
- Department of Agriculture, Trade and Consumer Protection
- County Clerk
- County Zoning/Planning Authority
- Regional Planning Authority (Southeast Wisconsin Regional Planning Commission (SEWRPC))
- The following jurisdictions within 5 miles of any participating municipality:
  - Municipalities
  - School Districts
  - Vocational, Technical or Adult Education Districts
  - Sewer or Sanitary Districts

Step 2: Preparation of a Cooperative Plan.

Following the adoption of authorizing resolutions, the participating municipalities jointly prepare a cooperative plan for the affected territory. This plan should address the following topics (see Appendix A for a fact sheet from the DOA regarding formatting and other issues related to drafting a cooperative boundary agreement):

- Identify a contact person empowered to speak for all municipalities involved.
- The plan should identify current land use and physiographic conditions of the territory proposed to be included in the cooperative plan.
- The plan should specify the proposed period for which the agreement will be in place. If the period is greater than ten years, the plan should explain why so that the additional time can be concurred with by the DOA.
- Any proposed boundary changes should be identified, along with the conditions that will trigger any proposed changes. The plan should also specify approximately when any boundary changes are expected to occur. There are several options available to participants regarding boundary changes, including planning to maintain existing municipal boundaries while sharing municipal services.
- The consistency and compatibility of the proposed plan with existing state, regional, county and local plans, ordinances and administrative codes should be addressed. These can include: transportation, sewer, water, drainage, fiscal responsibility, school district boundaries, shopping and social customs and other matters. If the proposed plan is not consistent with these elements, it should describe how and when consistency is expected to be achieved.
- Participants should determine if the proposed plan area is appropriate for the amount and type of development, redevelopment or maintenance of the status quo that is expected to occur. The following issues should also be reviewed if applicable:
    - Determine that the amount of land slated for development is not in excess of that which can be reasonably expected to develop with urban uses. This can be done using instruments such as the general development plan, land use space utilization based on population and employment projections, or other methods.
    - The natural characteristics of the land to be annexed should be taken into account when determining the type and location of designated wetlands, shoreland zones, environmental corridors, prime agricultural lands and similar uses. The plan should explain how these uses will be protected and/ or enhanced.
    - Participants should determine if threatened or endangered plant and animal species are present and explain how the proposed boundary plan will affect existing habitat.
- The proposed plan should describe how municipal services will be provided to the area covered by the plan. Participants should obtain preliminary approval for any transportation, wastewater treatment, public water supply or other similar improvements that require state permits. The plan should include a schedule for the delivery of necessary services. Documentation of the engineering and financial feasibility for the services proposed for the area should also be provided. The plan should also explain how existing services (such as police, fire, water and sewer) will be extended.

- The plan should describe and locate physical elements needed for the development of the area covered by the boundary plan. These should include:
  - The arrangement of land uses
  - The location of streets and/or improvements to existing infrastructure
  - Site for public buildings, parks, community centers and other features
  - The general location of storm and sanitary sewers, detention basins and other public utilities
- An evaluation of the environmental consequences of the plan should be included. This should include impacts on air and water pollution, energy use and the effect on urban sprawl.
- Evidence should be provided that each participating municipality has considered alternatives to the proposed physical development of the area in order to minimize adverse environmental impact.
- A description of how the physical development of the area will be in compliance with applicable state or federal environmental laws and regulations should be included. Alternatively, the plan should indicate how compliance will be achieved.
- The plan should include a description of the effect it will have on remaining town lands, including an explanation of what mechanisms are in place to prevent or minimize urban sprawl.
- The plan should include a review of ordinances from adjacent non-participating municipalities to determine their potential ability to control the effects of urban development proposed within the cooperative planning area.
- An examination of whether the plan will help address housing needs in the participating communities.
- The plan should include a list of all permits and ordinances required by development expected to occur within the territory covered by the plan.
- A summary of all written public comments received during plan preparation and how they were considered during plan development should be provided.

Step 3: Post Plan Development Procedures

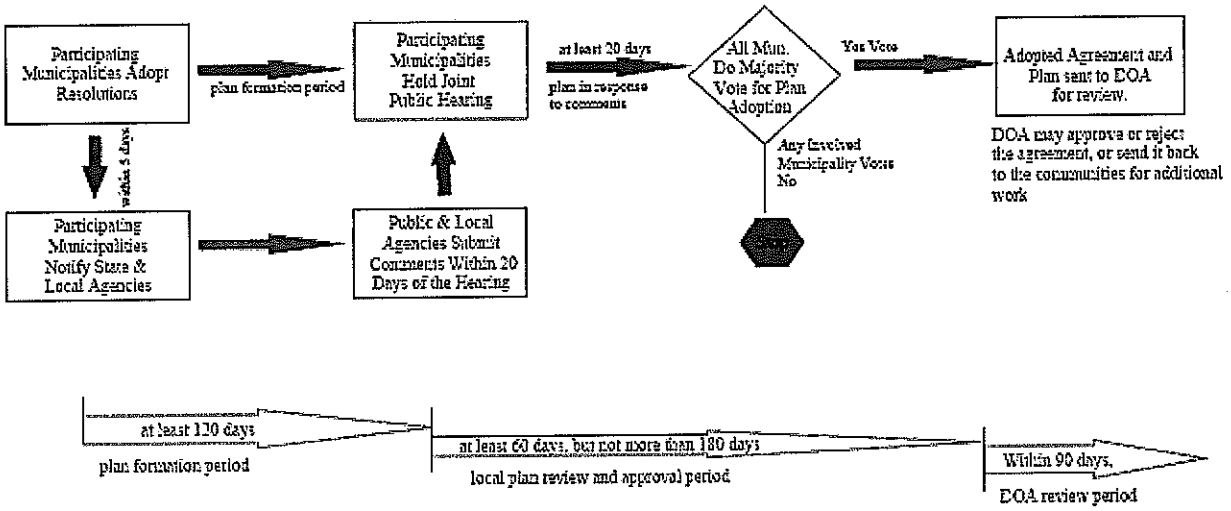
Following development of the proposed boundary agreement plan, notice must be provided by each participating municipality of a joint public hearing to be held at least 60 days before submittal of the plan to the DOA. After the joint hearing, no other procedure (except under s. 144.07(lm)) may be used to alter a boundary included in the proposed plan until the boundary is no longer included in the plan, the municipality withdraws from the plan, or the plan fails to receive approval from the DOA, whichever occurs first. This clause protects a draft cooperative plan from being disrupted by annexations or other actions that may conflict with the area covered by the draft plan.

Copies of the draft plan must be submitted to the respective county planning agency (Waukesha County Planning Department) and regional planning authority (Southeast Wisconsin Regional Planning Commission) for comment. Their comments must be included as an addendum to the plan. After consideration of these comments, each of the participating municipalities must adopt the final version of the cooperative plan. All participating municipalities must agree to any proposed amendments.

II

Cooperative Boundary Plan Process

Section 66.0307 Wis. Stats.



NOTE:

To keep this flow chart simple, a number of procedures were not included that are nonetheless authorized by s. 66.0307 Wis.Stats. These include residents petitioning for an advisory referendum, residents petitioning for the agreement be adopted by a super-majority vote of the governing body, the possibility of a public hearing by DOA, and the possibility that DOA sends the agreement back to the communities with comments on additional work that is needed for approval.

Figure 1

Chart taken from Wisconsin Department of Administration

Each participating municipality may hold an advisory referendum by their own action or by request. A referendum must be conducted within 30 days following adoption of the plan if a petition signed by a number of electors equal to at least 10% of the votes cast for governor in the municipality in the last election is filed with the clerk of the participating municipality. Any changes to the cooperative plan following a referendum must be reviewed and adopted by each of the participating municipalities. If an advisory referendum is held, the respective municipality then determines by additional resolution whether to submit the cooperative plan to the DOA for review.

Once the plan has been adopted by each participating municipality, two copies of the cooperative plan must be sent to the Department of Administration. The DOA, in consultation with the Departments of Natural Resources, Transportation and Agriculture, and Trade and Consumer Protection will approve, reject or request amendment of the submitted plan. The DOA will determine if it can complete the review within the normal 90-day time period, or whether, with the concurrence of the participating municipalities, additional review time will be required. If requested, the DOA will conduct a public hearing. The determination made by the DOA is subject to Chapter 227 judicial review.

After a cooperative boundary plan has been approved and takes effect, notice of any boundary changes pursuant to the plan must be filed with the Secretary of State in the same manner as currently required for municipal annexations occurring pursuant to s. 66.0217. Approved plans are valid inter-municipal agreements, and may be amended upon review and approval of the DOA.

Important Considerations Regarding Cooperative Boundary Agreements

One of the most important considerations to keep in mind regarding cooperative boundary agreements is that, as the name implies, they are cooperative. Neighboring municipalities cannot be forced into developing boundary agreements (this may be subject to change via proposed legislation discussed below). This is one of the primary obstacles that unincorporated towns often face in trying to develop boundary agreements with their neighbors. In some cases, incorporated municipalities feel that they have little incentive to develop any such agreement. On the other hand, municipalities may sometimes prefer developing cooperative boundary agreements in order to avoid potential future conflict and litigation and to provide a level of certainty in planning future development.

Cooperative boundary agreements take time to develop; a period of 6 months to 2 years is not unusual. One reason for this is that the statutory requirements for establishing boundary agreements are detailed and require significant reporting of the potential impacts of the agreement. Assurances that social and economic equity and environmental quality goals will be met are also required. Boundary agreements can also be rather expensive to develop, with the cost of preparing the agreement funded by the municipalities involved.

The cooperative boundary agreement planning process can bring longstanding conflicts to the surface, as well as precipitate unforeseen disagreements. In some cases, municipal officials are unwilling or unable to put their personal issues and differences aside when arguments get heated. Sometimes a decisive event, either positive or negative in nature, may provide the

necessary catalyst for the beginning of negotiations, or in other cases for the final agreement. On the other hand, there is always the risk that this even may become so divisive that the affected parties are no longer able to reach an agreement.

Towns should also remember that, in most cases, boundary agreements do not provide a "final solution". Cooperative boundary agreements must last at least 10 years but may last longer subject to DOA review. However, when the agreement expires, a town may once again be subject to annexation and extraterritorial review powers. In some cases, cooperative boundary agreements are implemented for much longer periods of time, and it may be possible to establish an agreement that remains in effect indefinitely. Of course, this is subject to the willingness and approval of all parties involved.

Suggestions for Developing Cooperative Boundary Agreements

The negotiation and formation of cooperative boundary agreements can be time-consuming and potentially contentious. The following strategies can help in easing this process (many of the following are based on suggestions from the DOA):

- Neutral third party mediation can provide valuable assistance in the development of cooperative boundary agreements. Such mediation could potentially be provided by any of the following entities:
  - County planning agencies
  - Regional planning commissions (SEWRPC)
  - Professional mediators
  - UW-Extension community development agents
  - Private consultants
  - State agency personnel
- All stakeholders should be involved at the commencement of negotiations. This should include all council, board and planning commission members. Representatives from any local governing body who can veto the prospective agreement should be present.
- Instead of tackling every major issue at once, it can be helpful to pick certain, smaller issues for resolution at first. This will aid in establishing a precedent and framework for dealing with the larger, more contentious issues later in the process. Alternatively, participants may choose to at first deal with enough issues so that everyone involved can "win" something.
- It is important that all participants maintain an open perspective. Representatives should focus on positive goals and strategies they want to achieve, instead of rehashing past problems. A successful agreement will most likely be forward looking.
- At some point in the plan development process, the penalties and costs of not reaching an agreement may need to be disclosed and discussed. Potential penalties could include: resources consumed by lengthy lawsuits, the loss of discretionary state aids, dissatisfaction by businesses with the image created by lengthy disputes, unwillingness of agency personnel to expend resources or goodwill to solve problems, and municipal leader burnout.

- Participants should attempt to avoid focusing discussions on the issues that divide municipalities or could potentially create friction between staff or elected officials.
- Establish ground rules for discussion and negotiations. It should be decided who will speak to the press and at what information will be shared publicly. At some point, it may be advisable to meet with representatives of the press to fully explain the purpose of the negotiations, what may be at stake, and how the public can be involved.

Proposed Legislation Affecting Boundary Agreements

The Joint Legislative Council has introduced 2007 Assembly Bill 254, which would amend Section 66.0307 to clarify and/or modify some of the state requirements pertaining to boundary agreements. As of May 29, 2007 the bill has been passed by the Committee on Urban and Local Affairs and forwarded to the Rules Committee. The passing vote by the Committee on Urban and Local Affairs was unanimous, and consultation with the DOA has indicated that the bill may stand a reasonable chance of adoption. A summary of the provisions of AB 254 are as follows:

- Boundary Agreements by Cooperative Plan (Section 66.0307)
  - The bill simplifies the current requirements of Section 66.0307 by substituting a general requirement for consistency with a comprehensive plan for the current more detailed planning requirements. If a municipality has not adopted a comprehensive plan, the consistency requirement would pertain to the municipality's master plan.
  - The bill would also reduce from 120 to 60 the number of days that must pass following the last authorizing resolution by a participating municipality before a public hearing on the proposed plan may be held.
- Mediated Agreements
  - This provision would provide an opportunity for a municipality to request mediation if a neighboring municipality refuses to participate in the current procedure for developing a cooperative plan. If a city, village or town declines a request to participate in developing a plan under the current Section 66.0307 procedures, this new provision would provide a procedure for a neighboring municipality for development of a plan through mediation. If a city or village refuses to engage in mediation after being requested to do so, any annexations occurring during the shorter of 270 days after the refusal or the period beginning after the refusal until the city or village agrees to engage in mediation may be contested by the petitioning town if the DOA determines the annexation is not in the public interest. If a town refuses to engage in mediation, that town may not contest any annexation of its territory to the petitioning city or village that takes place during the shorter of 270 days after the refusal or the period beginning after the refusal until the town agrees to engage in mediation.
  - If both parties agree to mediation, the mediation period expires after 270 days unless the participating municipalities agree to extend the period. If a cooperative plan is developed through mediation, the proposed bill provides for a time period for holding a public hearing on the plan.

- Boundary Agreements Under Section 66.0301 (General Intergovernmental Cooperation)
  - AB 254 would establish a specific procedure for determining municipal boundaries under Section 66.0301. An agreement under this procedure may also include any other provisions municipalities are authorized to agree to under Section 66.0301 and Section 66.0305 (agreements to share revenues). Once an agreement established under these procedures expires, all provisions of the agreement expire with the exception of boundary determinations, which would remain in place until subsequently changed. The maximum term of a Section 66.0301 agreement would be 10 years. A boundary agreement developed under Section 66.0301 would require a public hearing and the bill provides for a referendum of the electors residing within the territory whose jurisdiction is subject to change as a result of the agreement.
- Court Stipulated Boundary Agreements in Contested Boundary Actions (Section 66.0225)
  - The proposed bill would limit the application Section 66.0225 to contested annexations and would also limit the scope of boundary agreements developed in this manner to the portion of the boundary "that is the subject of the annexation."

AB 254 would address one of the major problems towns such as Lisbon face when trying to develop cooperative boundary agreements with adjoining municipalities. Incorporated municipalities often find little incentive to enter into such agreements with their unincorporated neighbors. AB 254 would allow Towns to petition for mediation that would bring the other parties to the table. The bill also provides some incentive to these incorporated municipalities to engage in negotiations by restricting their ability to annex territory after refusing to enter negotiations.

Examples of Cooperative Boundary Agreements

The DOA lists 20 boundary agreements established between February 1996 and January 2007. As of January 2007, there were 7 boundary agreements listed as "in progress," one of which, between the City of Madison, Village of DeForest, Town of Burke, and City of Sun Prairie, has since been adopted.

City of Middleton and Town of Springfield

These two municipalities adopted a boundary agreement under Section 66.0301 on March 25, 2004, to run 20 years from the date of adoption. The agreement is in the format of a 17-page resolution with exhibits, including a map of areas defined within the agreement. It lists a number of reasons the communities entered into the agreement:

- The City and Town have joint concerns regarding their border, including consideration of the possibility of litigation over annexations from the Town to the City.
- The City's long-term growth and development plans envision continued northward development in a logical and well-planned fashion.
- The Town desires to protect, indefinitely, the integrity of its territory north and west of a given line.

- The City desires that all other development shall occur in the City, served by all City municipal services and in compliance with all applicable City development standards.
- The City and the Town desire, during the term of this Agreement, to prevent new development of the lands within the planning area covered by this Agreement which lie outside the identified development zone and to assure that all development which may ultimately become part of the City occur in a manner which is compatible with City development standards;
- The City desires that owners of lands in the Town not receive a windfall in the form of City improvements but rather pay a fair share for improvements that benefit lands in the Town.
- The Town desires to protect the financial interests of the Town and its citizens as the City grows by arranging favorable terms with respect to taxes, payment for improvements, and revenue sharing.
- The City and Town both desire that provisions be made for the timing and location of future urban development so that the eventual City-Town border is well-planned, with compatible development on both sides.

The agreement splits the Town into 5 areas, from the point of view of Town/City interaction: a City growth area, a "Town/City interest" area where development may occur after the City growth area has been substantially developed, a long-term agricultural preservation area, an extraterritorial jurisdiction area, and an area where the City has no jurisdiction. Provisions for arbitration/mediation are established as part of the agreement, should a breach of the agreement occur.

City of Madison and Town of Middleton

These two municipalities adopted a boundary agreement under Section 66.0307 on September 29, 2003. The agreement is in the form of a 35-page resolution. The City of Madison and Town of Middleton had a contentious history, which included litigation over the issue of annexations. An initial agreement was reached in 1994 whereby the City could annex land east of a certain line and would not exercise its extraterritorial jurisdiction west of a certain line.

In 2001, a citizen-initiated effort to incorporate the Town led the City and Town to explore an extension of the 1994 plan to provide long-term certainty and benefits for both parties. The City's long-term plans envisioned continued westward development in a logical and well-planned fashion, while the Town sought to protect, indefinitely, its territory west of a given line. The City also sought to insure that development within existing "islands" and "peninsulas" of Town land within the City occur in accordance with City standards, to eventually be assimilated by the City. At the same time, the Town was looking to protect landowners from being annexed against their wishes. Both parties sought to establish a Transition Area along the eventual City-Town border where well-planned development would occur that is compatible with both sides.

The agreement established a line that will eventually serve as a permanent boundary between the City and the Town. During the first 39 years of the agreement, only willing property owners east of this line will be attached to the City. In 2042, all remaining Town lands east of

this line will be annexed by the City. The agreement established a framework for joint discussion and planning of land uses within the Transition Area. The agreement also established a revenue sharing program wherein property tax revenue collected any commercial property attached to the City with the Town for five years. The City is allowed to levy special assessments against Town properties for public improvements that specially benefit the property. The Town's financial interests are protected with arrangements concerning taxes, payment for improvements, and revenue sharing. Under the agreement, Town landowners cannot be annexed against their will. The agreement itself ends on December 31, 2060. A section of the agreement outlines an arbitration/mediation process, should a breach of the agreement occur.

City of Madison and Town of Blooming Grove

On April 20, 2006, under Section 66.0307, the City of Madison and the Town of Blooming Grove entered into a cooperative boundary agreement that came about as a result of numerous disputes over municipal boundaries and the provision of municipal services. In particular, prior annexations had fragmented the Town into "islands," and the likelihood of future annexations meant the continued existence of the Town was in jeopardy. Thus, the agreement was welcomed by the Town of Blooming Grove because the cooperative plan provided a level of certainty regarding the future of the Town. In turn, the plan assured the City of Madison that all development occurring in the Town north of the determined boundary would follow Madison's development standards and eventually be assimilated into the Madison municipal boundary. The boundaries established by the plan are also attempt to balance the desire of residential owners to remain part of the Town and the desire for commercial owners to be annexed into the City of Madison.

Over the life of the plan, there is a schedule for complete annexation of Town lands into the City and the eventual dissolution of the Town as a whole. In 2015 and 2020, two phased attachments of Town land to the City can occur with the permission of land owners. On October 31, 2027, a final and complete attachment will occur that will officially end the existence of the Town of Blooming Grove. It is important to note that throughout the life of this plan Town land south of the determined plan boundary can continue to be annexed by the Village of McFarland according to state law.

Beyond the basics of the boundary agreement, the cooperative plan also includes guidelines for "orderly urban growth" within the planning area as well as methods for revenue sharing between the Town and the City and suggestions to increase the level of services in the Town over the life of the agreement.

City of Kenosha and Town of Somers

On February 22, 2005, the City of Kenosha and the Town of Somers entered into a cooperative boundary agreement under Section 66.0307. The plan was organized around 5 key points:

1. The plan's primary purpose was to address the need for a permanent, consistent boundary between Kenosha and the Town of Somers. Before the agreement, the Town had experienced multiple annexations by the City that had resulted in an "irrational" boundary which made providing services to both City and Town land difficult, and restricted both parties ability to participate in land use planning.
2. Under normal annexation conditions, it is difficult to plan for long range infrastructure improvements because there is uncertainty as to where City territory may extend. This agreement provides a degree of certainty that will allow better and more orderly planning of infrastructure improvements.
3. The intergovernmental agreement provides for the orderly development of municipal water and sanitary services between the City of Kenosha Water Utility and the Town of Somers.
4. It is hoped that the provision of municipal services to the Town will reduce some of the incentive to pursue low-density "leap-frog" development.
5. Development in the city growth areas will bring with it more robust public safety services and public health services (e.g. sewer) that will improve the residents' quality of life. The predictable growth will also allow better transportation planning which will further enhance quality of life in those areas.

The plan allows for a 30-year period in which the determined boundary can be adjusted, following which the boundary will be considered permanent

Existing Town of Lisbon Boundary Agreements

Note: Please refer to Appendix B for maps illustrating the boundaries established by the two existing boundary agreements.

The Town of Lisbon is party to two boundary agreements with neighboring municipalities: one with the Village of Sussex and the other with the Village of Merton. Both of these are court boundary stipulations and intergovernmental cooperation agreements under Section 66.0225, which is intended to help resolve legal conflicts by court ordered boundary agreements.

Town of Lisbon and Village of Sussex

The boundary agreement between the Town of Lisbon and the Village of Sussex was established on January 22, 2001. The agreement was ordered by court under Section 66.0225 and came as the result of a lawsuit challenging the validity of a Village annexation. In order to establish official boundaries between the Village and the Town and provide a method for orderly annexation and oversight of Town lands, the agreement established two primary land territories:

Village Growth Area – In order to establish controlled growth of Sussex and managed annexation of Town lands, the agreement established certain territories within the Town as Village Growth Areas. These areas were created with the understanding that the Village would eventually annex these lands and that the Town would do nothing to prevent that annexation from occurring. In turn, the Village agrees that no land outside the Village Growth Areas will be annexed, except in particular instances described in the Agreement. The Village Growth Areas are depicted on Map 1.

Joint Planning Area – The Village and the Town identified certain areas that, when developed, would have impact on both parties. These were designated as Joint Planning Areas with the understanding that both the Town and the Village would cooperate in all matters relating to land use planning. The agreement called for the creation of a Joint Planning Committee comprised of members from the governance of both the Town and Village. This committee is charged with making land use decision for the Joint Planning Areas. The Joint Planning Areas are depicted on Map 2.

Beyond the creation of land areas, the agreement also created a Shared Services Committee (SSC). The SSC is comprised of representatives from both the Town and the Village and is in charge of considering the possibility of combining services such as fire, emergency medical personnel, police protection, public works, and creation of parks in order to better serve both communities. The Village also agreed to extend sewer services to some Town lands using their extraterritorial powers to control the addition of the service. The remaining portions of the document cover required elements such as performance standards, enforceability and dispute resolution.

Town of Lisbon and Village of Merton

The boundary stipulation and intergovernmental cooperation agreement between the Town of Lisbon and the Village of Merton was established on February 25, 2002. The agreement was ordered by court under Section 66.0225 and came as the result of a lawsuit challenging the validity of a Village annexation. All of the elements of the Merton boundary agreement - Village Growth Areas, Joint Planning Areas and the Shared Services Committee - are identical with the Town of Lisbon and Village of Sussex agreement. The only addition to the Merton/ Lisbon agreement is the inclusion of a stipulation that requires the Village to pay an annual fee towards road construction that was performed the previous year by the Town on a roadway that, under the new agreement, abuts the Village of Merton. The maps that depict the Lisbon/Merton Village Growth Areas and Joint Planning Areas follow.

Adjacent Municipalities With No Boundary Agreement With Lisbon

The Town of Lisbon does not currently have boundary agreements with:

- Village of Menomonee Falls
- Village of Lannon
- City of Pewaukee
- Village of Pewaukee
- Village of Hartland

III

III. Incorporation

As defined by the Department of Administration, incorporation is the process of creating new villages and cities from unincorporated town territory.

Statutory Background on Incorporation

Chapter 66, Subsection 2 of the State of Wisconsin Statutes outlines the process and requirements for municipal incorporations.

Incorporation Procedural Process

Section 66.0203 establishes the procedures that must be followed in order for a town to petition for incorporation. It is important to note that following these steps does not guarantee a successful incorporation attempt; the Town characteristics necessary to achieve incorporation are detailed in a different statute and are covered in a later section of this report. The following is a brief summary of the required procedural steps for submitting a petition for incorporation. *(note: Appendix C includes information on the statutory procedures and requirements for incorporation petitions)*

Section 66.0203: Incorporation Process

1. *Notice of Intention:* Within 10 – 20 days of the circulation of an incorporation petition, a class 1 notice announcing the petition must be published within the county where the Town seeking incorporation is located.
2. *Petition:* A petition to seek incorporation must be circulated and signed by at least 50 residents (25 if the Town is less than 300 people) and then filed with the appropriate county circuit court.
3. *Hearing and Costs:* After the petition is filed, the circuit court will set a date for a hearing on the matter of the incorporation.
4. *Notice:* Notice of the filing of the petition and the date of the hearing must be published as a class 2 notice and given by certified or registered mail to the clerk of each town in which the territory to be incorporated is located and to the clerk of each metropolitan municipality of the metropolitan community in which the territory is located. The mailing must take place at least 10 days prior to the hearing.
5. *Parties:* Any governmental unit entitled to notice pursuant to subsection 4 (Notice), any school district lying at least partly in the territory proposed for incorporation or any other person found to be a party in interest may become a party to the proceeding prior to the hearing.
6. *Annexation Resolution:* Any municipality whose boundaries are contiguous to the territory may file a resolution adopted by a two thirds vote of its governing body stating its willingness to annex the territory seeking incorporation up to the time of the circuit court hearing.
7. *Action:* No action to contest the incorporation may be commenced after 60 days from the charter of incorporation by the secretary of state.

1. *Function of the Circuit Court:* At the advertised hearing, the circuit court will decide if the territory seeking incorporation meets the standards under Section 66.0205 (discussed below). If the standards are not met, the petition will be dismissed. If the territory does meet the appropriate standards, the petition will be referred to the Incorporation Review Board.
2. *Function of the DOA Incorporation Review Board:* The board will determine whether the petition for incorporation meets the necessary criteria under Section 66.0207 (discussed below). Within 30 days of receipt of the petition by the board and payment of any applicable fees under Section 16.53(14), whichever is later, any party in interest may request a hearing. The petition review fee required by the board is $20,000. Unless the court sets a different time limit, the board must prepare its findings and determination within 180 days after receipt of the referral from the court or payment of any fees, whichever is later. Dependent on the board's findings, they will either (i) dismiss the petition, (ii) grant the submitted petition (then move to a referendum – discussed below), or (iii) recommend the petition be resubmitted to include more or less territory.

Standards for Review of Incorporation Petitions

Section 66.0207 establishes the standards for review of incorporation petitions. These standards are utilized by the Incorporation Review Board. 2003 Wisconsin Act 171 created the Incorporation Review Board (IRB) as an update to the manner in which petitions are reviewed by the Department of Administration. The Secretary of the DOA (or a designee) is one of the five members of the board. The IRB is responsible for reviewing petitions to ensure compliance with Section 66.0207. Appendix D is an informational handout from the DOA that contains additional information regarding incorporations and the criteria for review.

Circuit Court Review

Before incorporation petitions are forwarded to the IRB, the circuit court must determine that the petition meets the formal and signature requirements as well as the following minimum requirements pursuant to Section 66.0205. Essentially, the territory to be incorporated must fall into one of the following categories (*note: the Town of Lisbon would be required to petition as a metropolitan village or city)*:

1. *Isolated Village:* At least one-half square mile; resident population of 150
2. *Isolated City:* At least one square mile; resident population of 1,000 and density of at least 500 persons per square mile.
3. *Metropolitan Village:* At least two square miles; resident population of 2,500 and a density of at least 500 persons per square mile.
4. *Metropolitan City:* At least three square miles; resident population of 5,000 and a density of at least 750 persons per square mile.
5. If the territory is within ten miles of a first class city or five miles of a second or third class city, the minimum area requirements increase to four square miles for villages and six square miles for cities.

III

Incorporation Review Board

Once an incorporation petition has been forwarded by the circuit court, the IRB may only approve the petition for referendum if the following requirements are met pursuant to Section 66.0207 (*note: further information regarding the materials that should be part of any petition is included in Appendix D)*:

1. *Characteristics of Territory:*

   "The entire territory of the proposed village or city shall be reasonably homogenous and compact, taking into consideration natural boundaries, natural drainage basin, soil conditions, present and potential transportation facilities, previous political boundaries, boundaries of school districts, shopping and social customs."

   It is important to note that this section of the statute begins with the terms "homogenous and compact." These are two major considerations for the IRB when reviewing petitions. The board will investigate whether the territory to be incorporated has some sort of unifying identity or if the territory consists more of individual, isolated areas that have more in common with neighboring municipalities than with other areas within the petition territory. In the case of a "metropolitan" petition (such as would be the case with Lisbon), the petition must describe how natural resource attributes, the built environment, and related socio-economic activities within the territory distinguish it from the character and activity of adjacent municipalities. Please also refer to Appendix B for further information regarding the maps and information required in the petition to assist the IRB in their review.

2. *Territory Beyond the Core:*

   "The territory beyond the most densely populated one-half square mile specified in s. 66.0505 (1) or the most densely populated square mile specified in s. 66.0205 (2) shall have an average of more than 30 housing units per quarter section or an assessed value, as defined in s. 66.0217 (1)(a) for real estate tax purposes, more than 25% of which is attributable to existing or potential mercantile, manufacturing or public utility uses. The territory beyond the most densely populated square mile as specified in s. 66.0205 (3) or (4) shall have to potential for residential or other land use development on a substantial scale within the next three years. The Board may waive these requirements to the extent that water, terrain or geography prevents such development."

   This requirement is where many incorporation petitions run into difficulty. Towns often seek to incorporate as a whole and thus submit petitions for areas that include large amounts of undeveloped territory. The DOA has subsequently rejected these petitionsand recommended that the towns resubmit their petitions with borders revised to include only those areas that have potential for development within the next three years. Doing so would, in effect, create two government entities within the territory that was formerly located within the town. In the case of the Town of Ledgeview in Brown County, the DOA pointed out that the town's own comprehensive plan indicated that much of the territory they wished to incorporate would be maintained as farmland or

undeveloped for the duration of the plan. As a result, it is important that a town wishing to incorporate ensures that their comprehensive plan or master plan is compatible with this requirement for any territory that would be incorporated.

3. *Tax Revenue:*

"The present and potential sources of tax revenue appear sufficient to defray the anticipated cost of governmental services at a local tax rate, which compares favorably with the tax rate in a similar area for the same level of services."

This section of the statute requires the petitioning town to demonstrate that it contains sufficient tax base to provide the services required of an incorporated municipality at a tax rate comparable to neighboring municipalities.

4. *Level of Services:*

The proposed incorporation must be found to be in the public interest as determined by the IRB upon consideration of:

"The level of governmental services desired or needed by the residents of the territory compared to the level of services offered by the proposed village or city and the level available from a contiguous municipality which files a certified copy of a resolution as provided in s. 66.0203(6)."

The board must consider the level of services desired or needed by the residents of the area, compared to the level of services offered by the proposed village or city and the level of services available from a contiguous municipality that filed a resolution for annexation. If no adjacent municipality files a resolution for annexation, then this standard is not applicable.

5. *Impact on the Remainder of the Town:*

The IRB must consider:

"The impact, financial and otherwise, upon the remainder of the Town from which the territory is to be incorporated."

This standard applies only when less than the entire town is seeking to incorporate. If the entire town is to be included in the incorporated municipality, this standard is not applicable.

6. *Impact on the Metropolitan Community:*

   "The effect upon the future rendering of governmental services both inside the territory proposed for incorporation and elsewhere within the metropolitan community. There shall be an express finding that the proposed incorporation will not substantially hinder the solution of governmental problems affecting the metropolitan community."

   This standard applies only to "metropolitan" incorporations, such as would be the case with the Town of Lisbon. The petitioning town must, among other things, describe the consistency of existing policy, regulatory and service issues in the territory proposed for incorporation with those of the county and adjacent municipalities. Examples of such issues include regional transportation, environmental and watershed protection, storm-water runoff, economic development, housing and public works.

The IRB may find that an incorporation petition does not meet all of these requirements. In that case, the board may either dismiss the petition outright, or dismiss the petition with the recommendation that the town amend the petition for resubmittal. If the IRB finds that all requirements are met, it will forward the petition to the circuit court with a recommendation for approval. The court will then order that an incorporation referendum be held in the territory proposed for incorporation.

Incorporation Referendum

If the petition for incorporation is approved by both the county circuit court and the DOA Incorporation Review Board, the court will then order the execution of an incorporation referendum. The referendum, like the petition procedure, must follow a specific set of procedural steps pursuant to Section 66.0211:

1. *Order:* The circuit court will order the holding of an incorporation referendum and will specify the voting place and date of the referendum, which shall be at least 6 weeks following the date of the order.
2. *Notice of Referendum:* Once the date and location are determined, a public notice of the referendum must be printed in a local newspaper once a week for 4consecutive weeks. The first publication may not be more than 4 weeks before the referendum.
3. *Carry out and Return:* The referendum shall be conducted in the same manner as an annexation referendum under Section 66.0217 (7) to the extent applicable. The ballot must contain the words "For a city [village]" and "Against a city [village]". The results should be returned to the circuit court by the court appointed inspectors.
4. *Costs:* If the referendum goes against incorporation, the costs of the referendum are to be borne by the towns involved in the proportion that the number of electors of each town within the territory proposed to be incorporated, voting in the referendum, bears to the total number of electors in the territory voting in the referendum. If the referendum is in favor of a village or city, the costs are to be charged to the municipality in the apportionment of town assets.

Municipal Incorporation Process

See sections 66.0203-66.0213 of the Wisconsin Statutes

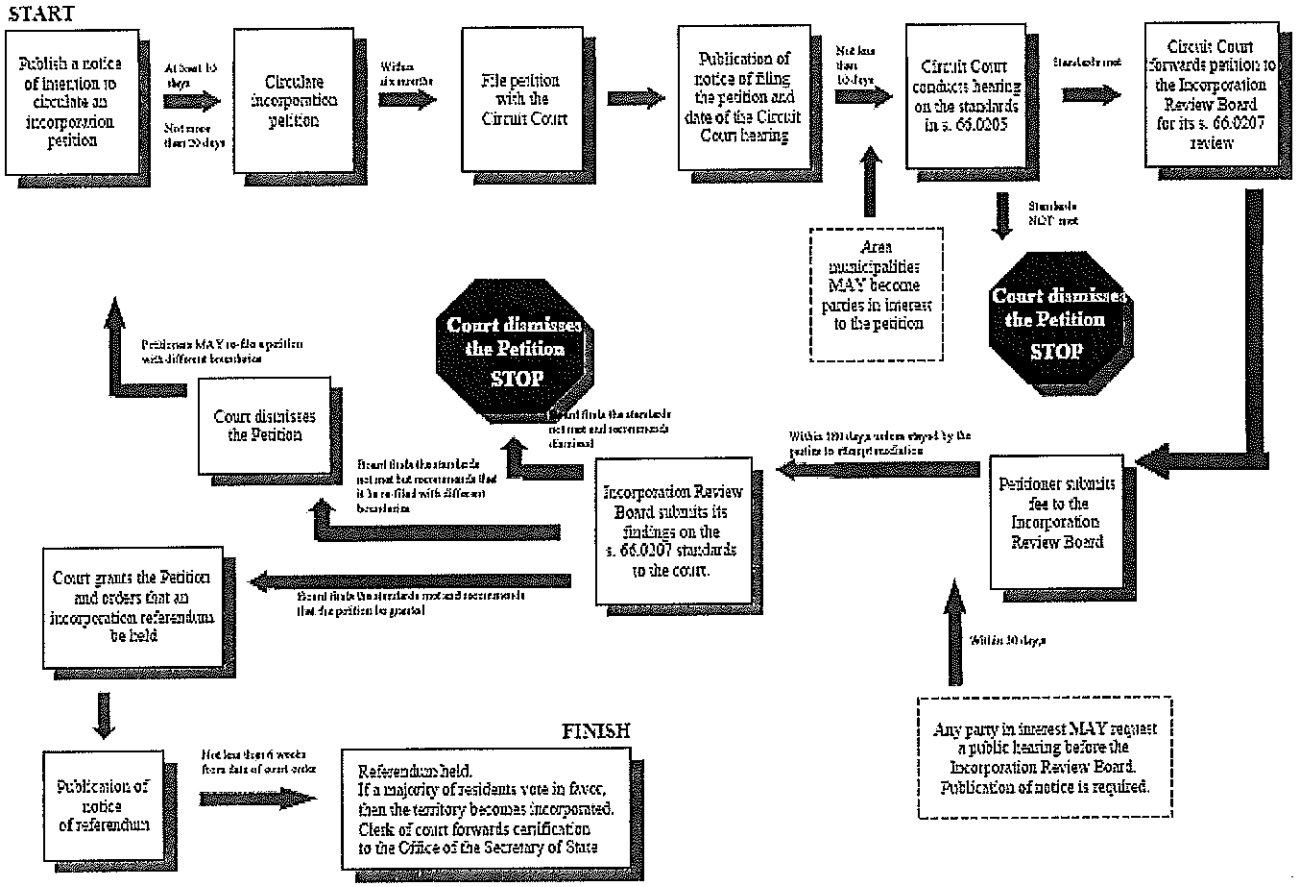


Figure 2

Chart produced by the Wisconsin Department of Administration

5. *Certificate of Incorporation:* If the majority of voters cast ballots in favor of incorporation, the clerk of the circuit court will certify the fact to the secretary of state and supply the secretary of the state with a legal description of the boundaries of the new city or village, the associated population and a copy of the plat of the village or city. Within 10 days of receipt of the description and plat, the secretary will forward 2 copies to the appropriate state departments and issue a certificate of incorporation.

Important Considerations Regarding Incorporation

The incorporation process can be time-consuming and expensive. One of the first steps for a town considering incorporation is to ensure that their comprehensive or master plan calls for the type and density of development that will meet the requirements established by state statute for towns seeking to incorporate. Adopting or amending a comprehensive plan is a long process in itself, frequently taking about two years. When addressing their comprehensive plan, towns considering incorporation should remember the "3-year rule" for density, where all areas proposed for incorporation must meet certain density requirements, or be expected to do so, in the next three years.

Once the comprehensive plan is in place, the preparation of the incorporation petition itself can take several years to develop. Two recent petitions, in Ledgeview and Caledonia, each took one to three years to develop. Costs for the preparation of a petition to incorporate can vary significantly but are almost always substantial.

Finally, towns must remember that there is no guarantee of a successful outcome to an incorporation petition. A town may spend 3 years or more in preparing the petition and going through the DOA review process only to have the petition denied. Between 1995 and 2004, 10 of 19 petitions to incorporate were dismissed.

Examples of Recent Incorporation Petitions

The following examples of incorporation attempts, some successful some not, are intended to provide a glimpse at the many roadblocks and circumstances that can arise for towns when pursuing incorporation.

Town of Ledgeview

The Town of Ledgeview is located in Brown County, south of Green Bay and adjacent to the City of DePere and the Village of Bellevue. After a year of preparation, the Town filed its formal incorporation petition to the circuit court in the fall of 2003. Both De Pere and Bellevue were admitted by the court as interveners. De Pere was concerned that the petition to incorporate included an island of town land along the Fox River within the city's boundaries, as well as an irregular border between the city and the proposed village. The Village of Bellevue contended that Ledgeview did not meet the statutory requirements for incorporation. The court referred the petition to the DOA in December 2003.

The DOA held a public hearing in June 2004, at which both De Pere and Bellevue testified in opposition to the petition. Following this meeting, the DPA recommended that each of the parties utilize mediation to resolve their differences. All parties agreed to the recommendation.

Ledgeview and De Pere were able to draft an intergovernmental agreement that would have transferred the island of town land to De Pere over time if Ledgeview was successful at incorporation. Bellevue and Ledgeview were unable to reach any agreement.

A second public hearing was held in May 2006 to update the record regarding the events since the first meeting. De Pere did not appear at this meeting, and Bellevue testified that a proposed business park in Ledgeview would compete with an office park planned by Bellevue.
Ultimately, the DOA found that Ledgeview did not meet two of the statutory requirements for incorporation. First, the DOA determined that Ledgeview did not meet the requirement for *Compactness and Homogeneity.* The DOA agreed with Bellvue's contention that Ledgeview was essentially two different communities – an urban/suburban western portion and a rural eastern portion characterized by cropland and scattered residential development. The DOA commented that the eastern portions of Ledgeview was similar to the neighboring towns of Glenmore and Eaton, while the western portion of Ledgeview was in places nearly indistinguishable from De Pere. The DOA suggested that a petition including only the western portion of Ledgeview may have met this standard.

The DOA found that Ledgeview's petition also failed to meet the standard for *Territory Beyond the Core.* This is the standard that requires all territory covered by the petition to have the potential for development on a "substantial scale" within three years. Bellevue pointed out that Ledgeview's own comprehensive plan indicated that large areas of the town would not develop for at least 20 years. Estimates by Ledgeview and Bellevue indicated that these areas would take between 32 and 62 years to develop at urban densities. The DOA again suggested that including less of the town's rural land may have allowed the petition to meet this standard.

In the end, Ledgeview's petition to incorporate was unsuccessful, and the Town does not have plans to again pursue incorporation in the near future. In their determination, the DOA recommended that Ledgeview and De Pere work toward adopting the intergovernmental agreement that was developed through mediation, and that Ledgeview and Bellevue pursue an agreement to resolve their differences.

Town of Caledonia

The Town of Caledonia is a populous town located just north of Racine. In 2004, after nearly three years of preparation, Caledonia petitioned the DOA for incorporation as a village. At the time of petition Caledonia had a population of 25,000, was 35% larger in area than a typical town, provided full-service police and fire departments with a total of 80 employees and had adopted village powers. The Town could also claim the presence of both neighborhood and community development sites. In addition, due to a prior intergovernmental agreement, the City of Racine had previously relinquished its extraterritorial powers over Caledonia, and was obligated to support the incorporation efforts.

The Town felt their petition presented a good argument for incorporation. Nevertheless, in April 2005, the DOA denied the incorporation petition for failing to meet the following standards:

1. *Compactness and Homogeneity:* The petition included over 20 square miles of rural

land. The DOA felt that the inclusion of this land violated the homogeneity standard sitting the Wisconsin Supreme Court case *Sharping v. Johnson* which stated, "a village may not be incorporated where the territory to be included therein involves a large amount of sparsely settled rural or agricultural lands not having the distinctive characteristics of the village itself."

2. *Territory Beyond the Core:* Again, because of the 20 square miles of rural land, the DOA felt that there was too much territory to expect the necessary development to occur within 3 years.

The DOA recommended that Caledonia submit a new petition to incorporate that only included the urbanized eastern portion of the Town.

Following the denial of petition from the DOA, two state legislators drafted special legislation that was added to the state budget bill which allowed Caledonia to incorporate by referendum despite their petition having been rejected. It would seem that this process would be controversial, but because Caledonia had the support of neighboring Racine and Mount Pleasant, the initiative went through with little opposition. It is important to remember that Caledonia case presented some unique circumstances and other towns should not count on benefiting from similar legislation in order to bypass the DOA.

Town of Richfield

The Town of Richfield in Washington County recently petitioned to incorporate as a village and expects a decision from the DOA this summer. The Richfield petition will be the first to be reviewed by the new Incorporation Review Board (as discussed above in the procedures section). The creation of the review board was not intended to modify any standards necessary for incorporation; instead it was initialized to foster greater public input and oversight through public hearings. The public hearing process will feature an initial hearing regarding incorporation followed by a statement released by the Board. The Town can then reply to the statement by submitting additional information. Follow that exchange a second hearing will be held were the Board will make its determination regarding the petition.

IV

IV. Recommendations for Town of Lisbon

The Long Range Vision Group met on June 28, 2007 to discuss the results of a survey of Town of Lisbon residents and to determine which options for future governance of the Town should be recommended to the Town Board. The Town survey indicated that governance option with the most support with the least opposition was for Lisbon to remain a town and to pursue further boundary agreements with neighboring municipalities. Incorporation also received strong support. Consolidation with one or more neighboring communities received the least support and most opposition from survey respondents. Based in part on these results, the Long Range Vision Group recommends that the Town of Lisbon remain a town for the immediate future and pursue boundary agreements with adjoining municipalities. Recognizing that boundary agreements are generally not permanent and can be broken, the Group recommends considering incorporation as a long-term strategy and this strategy should be reflected in the Town's comprehensive plan.

The Group recognizes that incorporation is an expensive, time-consuming process, with no guarantee of success. The survey showed that the majority of town residents are generally satisfied with the level of municipal services currently provided to town residents. Therefore, the town does not need to seek incorporation in order to provide increased services at this time. Another reason for seeking incorporation is the ability to maintain municipal borders, and the increased independence in land-use decisions afforded to incorporated municipalities.

The Group also recognizes that the Town of Lisbon would currently face difficulties in meeting the statutory requirements for incorporation. In particular, the Town currently contains areas that may not meet the density requirement now or within the three years required by state statute. Additionally, there would be some question regarding whether the Town has the "homogenous and compact" character required by statute. This is not to say that incorporation should be ruled out but that it should be more of a long-range goal, allowing the Town to develop a comprehensive plan and make land-use decisions that will eventually allow the town to meet the statutory requirements for incorporation.

On the other hand, cooperative boundary agreements are something that the Town can pursue immediately. As previously mentioned, the Town currently has court stipulated agreements in place with the Villages of Sussex and Merton. Since the legal validity of such agreements is in some question, the Town should investigate the possibility of building upon these existing agreements to form cooperative boundary agreements with those communities pursuant to Section 66.0307. The Town should also pursue such agreements with other neighboring municipalities. According to the DOA, once a portion of the Town is covered by a cooperative agreement, other neighboring municipalities are barred from annexing that territory. This is because the Section 66.0307 process provides for input from neighboring municipalities and agencies. These non-party entities would be allowed to express any opposition to a cooperative boundary agreement, which would be taken into consideration by the DOA. Subsequently, if the agreement is approved by the DOA, the territory is no longer open to annexation, subject to the duration and terms of the agreement. It is also important to remember that

the DOA has never rejected a cooperative boundary agreement developed under Section 66.0307.

The Town of Lisbon will soon initiate the process to develop and adopt a comprehensive plan pursuant to the "Smart Growth" law. One of the required elements this plan must address is intergovernmental cooperation. This element is intended to promote cooperation between the various levels and units of government operating within an area. It is suggested that, as part of this element, communities address issues related to municipal boundaries and work toward establishing boundary agreements. Since the Town will be addressing this issue as part of the comprehensive planning process, it will provide an ideal opportunity to investigate the opportunities for developing further boundary agreements with neighboring municipalities, preferably pursuant to Section 66.0307. The discussions that take place during this process will provide Lisbon with an opportunity to determine which neighbors may be most receptive to establishing cooperative boundary agreements. As mentioned, the Town already has boundary stipulations in place with Sussex and Merton. The Town should work toward building upon these agreements to establish cooperative boundary agreements under Section 66.0307. If the Town is successful in establishing such agreements that cover most of or the entire Town, the Town would be protected from annexations subject to the terms and length of the agreements. It will likely take several years to establish any cooperative boundary agreements, but these can still most likely be done in less time than it would require to prepare for and pursue incorporation.

In summary, the Long Range Vision Group recommends that the Town of Lisbon:

- Short-Term: Pursue cooperative boundary agreements pursuant to Section 66.0307 of the Wisconsin Statutes with neighboring communities and work toward building upon existing boundary stipulations to have them formally adopted pursuant to said statute.

- Long-Term: Keep in mind a long-term goal of incorporation to provide Lisbon with a permanent solution to preserving the borders and identity of the Town. The comprehensive plan and all other land-use decisions should be designed with this goal in mind. Future land-use decisions should contribute toward the Town being better able to meet the statutory requirements for incorporation.

Summary of Costs to Accomplish Cooperative Boundary Agreements

Activity	Who Is Involved	Range of Costs	Timeframe
Intergovernmental cooperation element of comprehensive plan Joint meetings with adjacent municipalities to discuss goals and issues. Identify common objectives that can form basis for boundary agreements. Incorporate these common elements into comprehensive plan. As a result of comprehensive plan meetings, identify municipalities that present greatest opportunities for negotiating acceptable boundary agreements.	Town Planner	Additional cost to emphasize this element in comprehensive plan: $10,000 to $25,000	2 years to prepare comprehensive plan
Negotiate boundary agreements with selected municipalities that bring remaining municipalities in as partners to the agreement. Around three agreements may be sufficient to include all Town territory within an agreement.	Town Attorney Town Planner	$25,000 to $50,000	1 year
Prepare documents and maps to support negotiations. Some of the necessary maps and documents may be produced during the comprehensive planning process. This step and costs are for additional materials needed for boundary agreements.	Town Planner Town Attorney	$5,000 to $15,000	This will take place during the 1-year negotiation period
Public education to support process Website Newsletter Public meetings	Marketing/Public Relations Firm	$10,000 to $20,000	This will take place during the negotiation and hearing periods
Hearings Multiple hearings Notices Presentations	Town Attorney Town Planner	$10,000 to $25,000	6 months after negotiation period
Referendum (if used) Draft referendum Publicize Manage Voting	Town Attorney	$10,000 to $25,000	3 to 6 months
Final agreement Prepare document DOA review and approval	Town Attorney	$10,000 to $15,000	4 to 6 months
		Total: $80,000 to $180,000 (includes money for referendum, which is not required)	3 to 4 years including comprehensive plan