

WISCONSIN DEPARTMENT OF
ADMINISTRATION

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Division of Intergovernmental Relations
Municipal Boundary Review
101 E. Wilson Street, 10th Floor
Madison, WI 53702-0001
(608) 264-6102, Fax (608) 267-6917
<http://www.doa.wi.gov/>

November 7, 2005

Ms. Emma M Lawry
Lawry Family Trust
1941 Vahlen Avenue
Madison, WI 53704

Subject: Proposed annexation to City of Madison

Dear Ms Lawry:

Thank you for sending the Department a copy of your petition requesting annexation to the City of Madison for our review pursuant to section 66.0217 (2) and (6), Wis Stats. However, we are placing a hold on your petition because no review fee was enclosed. We also need to advise you that your property is included within the territory of a proposed cooperative boundary agreement currently being developed under section 66.0307, Wis Stats., by the Village of DeForest and the Town of Burke.

Regarding the review fee, sections 16.53 (14) and 66.0217 of the Wisconsin Statutes authorize the Department to collect a fee for the review of municipal annexations. Enclosed is a *Request for Annexation Review* form that sets out the fee schedule. As noted on this form, the annexation fee includes an initial filing fee of \$200 and a review fee based on the size of the territory involved (for 5 acres, the acreage fee is \$300) for a total review fee of \$500.

Regarding the proposed cooperative boundary agreement, section 66.0307(7), Wis. Stats., describes a *boundary freeze* mechanism once the participating jurisdictions hold a joint public hearing on the agreement. In this case, a public hearing was held on the DeForest/Burke agreement on October 4, 2005, several days before you submitted your unanimous consent annexation petition to the Department.

The applicable statutory language relating to actions during the pendency of a cooperative agreement is as follows:

(7) OTHER BOUNDARY PROCEDURES. After the joint hearing under sub.(4)(b) is held, no other procedure, except the procedure under s. 281.43(1m), for altering a municipality's boundaries may be used to alter a boundary included in the proposed cooperative plan under sub.(3)(d)1., until the boundary is no longer included in the proposed cooperative plan, the municipality withdraws from the proposed cooperative plan or the proposed cooperative plan fails to receive approval from the Department, whichever occurs first. [Section 66.0307(7), Wis. Stats.]

Section 66.0217(2), Wis. Stats., which authorizes unanimous consent annexation petitions, expressly refers to the boundary freeze described above as a limitation on annexation authority, namely the ability to adopt an ordinance that results in changing the boundary contained in the proposed agreement. This clause was adopted as a subsequent amendment to the cooperative agreement statute. While there is no such express prohibition preventing our review of your petition, as a practical matter, you may rather not pay an annexation review fee for a required advisory annexation opinion that could be superseded by a successful cooperative agreement. Some may reasonably differ over the meaning of this wording, including whether the wording implying a prohibition applies to municipalities who are not party to the cooperative agreement.

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Our intent is not to further confuse matters but to offer you a choice, and that is for the department to perform a review now once the annexation review fee is received so long as you understand that subsequent adoption of an annexation ordinance could depend upon interpretation of the statutory wording that on its face implies a boundary freeze, or subsequent judicial interpretation of that wording if an ordinance is adopted, implemented, and later appealed in circuit court (and there have been no civil cases to date resulting in judicial interpretations of the language in the cooperative agreement statute). In other words, there is a risk that you may pay a fee and receive an annexation review only to later have the ordinance called into question and possibly reversed. In saying this, I am trying not to prejudge whatever actions the interested parties associated with this agreement may ultimately take, particularly as, at this time, the parties are working together to resolve this and similar issues

Another alternative is for you to wait and see whether or not a successful cooperative agreement resolves your situation, in which case you would not need to have paid the annexation review fee. If the cooperative agreement is not submitted to the state or approved, you could then submit the fee and petition for review.

Having outlined two alternative approaches for you, you may nevertheless desire to seek your own advice and counsel as to which choice would likely be the best one for your purposes.

We are aware that the Cities of Madison and Sun Prairie have submitted comments to the Village of De Forest and Town of Burke on the proposed cooperative agreement relating to their interests including territory, provision of municipal services, and prospective land uses associated with some of the Town of Burke lands that adjoin the two cities; and that De Forest and Burke intend to consider and may address these issues raised by Madison and Sun Prairie before any agreement is submitted to the state. At this time however, it is premature to speculate on any outcome that may be reached by the municipalities involved

I have enclosed a flowchart to help you better understand the cooperative boundary agreement process DeForest and Burke held their joint public hearing and the 20-day public comment period recently closed. The next step in the process is review by the jurisdictions' governing bodies of comments submitted during and after the public hearing, followed by possible changes to the agreement and ultimately, a separate vote by each governing body to approve or reject the agreement. If both of these bodies approve the agreement, it then is sent to the Department for review. The Department has 90 days following submittal to either approve or deny the agreement, or send it back with recommended changes. The proposed agreement, including text and maps, can be viewed on the village's internet website at: www.vi.deforest.wi.us (click on 'News' and then click on 'Joint Public Hearing between the Village of DeForest and the Town of Burke').

If you have any questions about the proposed agreement being prepared by the parties, I would encourage you to call either the Village of DeForest (608-846-6751) or the Town of Burke (608-825-8420). Should you have questions about the statutory cooperative boundary agreement process, please feel free to call me (266-0683) at any time, and I make the same offer to the parties involved in the cooperative agreement.

Sincerely,


George Hall
Municipal Boundary Review

Cc without attachments:

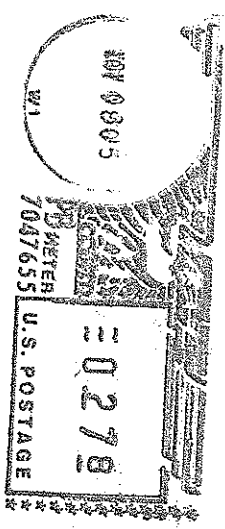
Ray Fischer, Clerk, City of Madison
Jane Hoepker, Clerk, Town of Burke
Jo Ann Miller, Administrator, Village of DeForest
Amy Volkmann, Administrator, Town of Burke
Attorney Al Reuter, Village of DeForest
Attorney Stanley Riffle, Town of Burke
Attorney Paul Evert, City of Sun Prairie
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