



**WISCONSIN DEPARTMENT OF  
ADMINISTRATION**

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**Municipal Boundary Review**

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June 8, 2017

PETITION FILE NO. 14018

SUSAN RICHARDS, CLERK  
CITY OF SHEBOYGAN  
828 CENTER AVE  
SHEBOYGAN, WI 53081-4442

GEORGENE LUBACH, CLERK  
TOWN OF WILSON  
5935 S BUSINESS DR  
SHEBOYGAN, WI 53081-8930

Subject: KOHLER CO. ANNEXATION

The proposed annexation submitted to our office on May 3, 2017 has been reviewed and found to be in the public interest. While our advisory opinion finds the annexation to be in the public interest, the Department recommends that the City and Town develop an intergovernmental boundary agreement to address and resolve the communities' irregular municipal boundaries to avoid future disputes.

In determining whether an annexation is in the public interest, s. 66.0217 (6), Wis. Stats. requires the Department to examine:

- 1) the shape of the proposed annexation and the homogeneity of the territory with the annexing village or city and any other contiguous village or city; and
- 2) whether the town could clearly better supply needed municipal services to the territory than the annexing city or village.

The annexation territory is contiguous to the City via a quarter-quarter sized parcel of city-owned territory approximately 650-feet wide. From there, the annexation varies in size from approximately 1,450-feet wide, narrowing to approximately 190-feet wide at a point between neighboring residential developments before ultimately expanding to a larger 450-acre territory which petitioners are intending to be developed as a golf course. Portions of the territory to be annexed are currently owned by the City.

This configuration falls somewhere between the Wisconsin Supreme Court's findings in *Mt. Pleasant v. Racine*<sup>1</sup> (1964) and *Mt. Pleasant v. Racine*<sup>2</sup> (1965) related to "Balloon-on-a-String" type configurations. In its 1964 *Mt. Pleasant* decision, the Supreme Court invalidated an annexation configuration varying in width from 153-feet to 306-feet. However, in its 1965 *Mt. Pleasant* decision, the Supreme Court approved of the annexation after its connection had been widened to 1,023 feet. The Department finds that, while not ideally shaped, this proposed annexation's dimensions fall closer to those of the Supreme Court's 1965 *Mt. Pleasant* decision.

Additionally, we find that the proposed land use of the annexation territory and the adjacent land to the north is more homogenous with the City than it is with the Town. Historically, the Department has sought to ensure that excess rural areas that are intended for continued rural use are not brought within a city or village when considering homogeneity either in the context of an annexation or an incorporation. This annexation is immediately adjacent to a fully developed part of the Town that features isolated town islands and peninsulas resulting in extremely fragmented city and town boundaries. Land uses within these isolated areas are urban in nature and much more consistent with the developed City lands than with the bulk of Town of Wilson lands to

<sup>1</sup> *Mt. Pleasant v. Racine*, 24 Wis. 2d 41 (1964).

<sup>2</sup> *Mt. Pleasant v. Racine*, 28 Wis. 2d 519 (1965).



the southwest which tends to be more rural in nature. As these areas annex to the City a rational shape will be achieved where one is currently lacking, either with or without the adoption of the proposed ordinance.

The land use proposed by the petitioners is also urban in nature. As mentioned, petitioners intend to develop a golf course and they desire City services such as sewer and water, police and fire protection, and planning and zoning services. The City indicates in its submitted questionnaire that it can provide these desired services. Petitioner has committed to using City water for the proposed development's clubhouse, irrigation system, maintenance building and cart building within three years of development. It cannot be said that the Town can "better" provide services such as water.

In our view, the intent of the statutes is to ensure that cities and villages grow in a rational manner. As noted above, the Department has found annexations involving excess rural land are against the public interest. *Village of Palmyra*, January 15, 2013. However, that is not what is occurring in this case. Here, the proposed annexation involves an urban use that requires urban services, and which is immediately adjacent to other urbanized areas. *Village of Palmyra*, December 2, 2014. The territory of the proposed annexation in this case is a logical extension of current urbanization of the area, and it is in the public interest to bring it within the boundaries of the City. Consequently, the proposed annexation differs from other Department opinions cited by the Town.

The Department recommends that the City and Town develop and utilize a boundary agreement under ss. 66.0301 or 66.0307 Wis. Stats.<sup>3</sup> which, over time, would create a rational municipal boundary line between the communities. The effect of this annexation will be to encompass existing urbanized development in this part of the Town of Wilson and could become a rational southern boundary of the City. However, effectuating this rational municipal boundary line will require the ultimate transfer of the isolated Town lands encompassed by this annexation.

Many Wisconsin communities have utilized boundary agreements to successfully resolve these types of irregular municipal boundaries, land use and service issues facing the City of Sheboygan and Town of Wilson. These approved boundary agreements are available for viewing at the Department's Municipal Data System – [mds.wi.gov](http://mds.wi.gov) – and resources are also available on the Department's website, including a roster of mediators trained to help communities resolve municipal boundary issues. Department staff are also available to answer any questions regarding boundary agreement requirements or process, or any other technical assistance.

Finally, the Department points out two issues with the scale map and metes and bounds description. First, the scale map and metes and bounds description indicate that no part of the annexation territory lies in the Southwest 1/4 of Section 10. However, the location description portion of the legal description does reference the southwest 1/4 of section 10. Second, the length of the call "South 00deg 23min 58sec West, 310.00 feet" in lines 11-12 of the metes and bounds description is shown as 310.06' on the scale map. These inconsistencies should be examined and resolved.

The Department reminds clerks of annexing municipalities of the requirements of s. 66.0217 (9)(a), Wis. Stats., which states:

"The clerk of a city or village which has annexed shall file immediately with the secretary of administration a certified copy of the ordinance, certificate and plat, and shall send one copy to each company that provides any utility service in the area that is annexed. The clerk shall record the ordinance with the register of deeds and file a signed copy of the ordinance with the clerk of any affected school district..."

State and federal aids based on population and equalized value may be significantly affected through failure to file with the Department of Administration. Please file a copy of your annexing ordinance, including a statement certifying the population of the annexed territory. **Please include your MBR number 14018 with your ordinance.** Ordinance filing checklist available at <http://mds.wi.gov/>, click on "Help on How to Submit Municipal Records". Email scanned copy of required materials (color scan maps with color) to [mds@wi.gov](mailto:mds@wi.gov) or mail to: Wisconsin Department of Administration, Municipal Boundary Review, PO Box 1645, Madison WI

<sup>3</sup> Additionally, communities in litigation over municipal boundaries may utilize s. 66.0225 Wis. Stats. to resolve that litigation via a stipulation and order intergovernmental agreement which is signed by the judge. Furthermore, s. 66.0217(11)(b) Wis. Stats. encourages parties to an annexation dispute to consider utilizing alternative dispute resolution.

53701-1645.

The petition file is available for viewing at: <http://mds.wi.gov/View/Petition?ID=2088>  
Please call me at (608) 264-6102, should you have any questions concerning this annexation review.

Sincerely,



Erich Schmidtke, Municipal Boundary Review

cc: Petitioners and Petitioners' Representative