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ADMINISTRATION

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Municipal Boundary Review  
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July 29, 2015

RECEIVED

Honorable James Kieffer  
Waukesha County Courthouse  
Court Room C295  
515 W. Moreland Blvd  
Waukesha WI, 53188

JUL 31 2015

CITY OF WEST ALLIS  
CITY CLERK

**INCORPORATION OF A PORTION OF THE TOWNS OF BROOKFIELD AND WAUKESHA,  
WAUKESHA COUNTY, AS A VILLAGE, Case #11-CV-4071**

Dear Judge Kieffer:

The Incorporation Review Board has completed its review of the petition to incorporate a portion of the Towns of Brookfield and Waukesha as a village. The Board was established to review petitions for compliance with standards set forth by the legislature in s. 66.0207 Wis. Stats.

You had ordered that our review process be recommenced on February 1, 2015, after the petition had been stayed since 2012.

According to s. 66.0203(9)(e) Wis. Stats., the Board has three options upon reviewing the petition against the statutory standards. The Board may find that:

- 1) The petition as submitted is dismissed;
- 2) The petition as submitted is granted.
- 3) The petition as submitted is dismissed with a recommendation that a new petition be submitted to include more or less territory as specified in the Board's findings and determination.

Based on testimony received at a public hearing held in the Town of Brookfield and two meetings held in Madison, as well as numerous submittals and correspondence received from the Petitioners, the neighboring communities that you recognized as Parties in Interest, and from testimony and correspondence of area residents, the Board finds that this petition as submitted does not currently meet three of the required standards in s. 66.0207 Wis. Stats. However, a portion of the territory could meet all of the required standards. Therefore, the Board recommends that a new petition be submitted that excludes existing Town of Brookfield island areas and that these island areas be transferred to adjacent municipalities by utilizing a boundary agreement under ss. 66.0301 or 66.0307 Wis. Stats.

The Board will waive the incorporation review fee for an amended petition which is filed within six months of this letter. Staff with the Municipal Boundary Review program will gladly meet with Petitioners, the Town of Brookfield, and the Parties in Interest to discuss a possible amended petition as recommended in the enclosed determination document. In addition, because our office reviews and approves municipal boundary agreements, staff is available to provide technical assistance with boundary agreements if the local governments would so choose.

July 29, 2015

The enclosed Findings and Determination document concludes the Incorporation Review Board's work with this petition. The Department of Administration will retain all supporting documents and records pursuant to Record Disposal Authorization for 10 years, after which they are transferred to the State Historical Society. These files are part of the Department's municipal incorporation record series, and are available upon request. The determination document is available on the Department's website.

Sincerely,



Ed Eberle, Chair of the Incorporation Review Board, and  
Administrator of the Division of Intergovernmental Relations

Enclosure: Determination of the Incorporation Review Board

cc:

Terry McMahon, Incorporation Review Board  
Paul Fisk, Incorporation Review Board  
Rich Eggleston, Incorporation Review Board  
Jay Walt, Petitioners Representative  
Jim Hammes, Petitioners' Attorney  
Rick Czopp, Town of Brookfield Administrator  
Gary Becker, Petitioners Planning Consultant  
Stan Riffle, Intervening City of Brookfield, Town of Waukesha, and Village of Sussex Attorney  
Karen Flaherty, City of Brookfield Attorney  
Julie Gay, Intervening City of Waukesha Attorney

(The following entities are not receiving a full determination document. However, the determination document is available upon request, and may also be viewed at:

<http://doa.wi.gov/municipalboundaryreview>

Kathleen O. Novack, Waukesha County Clerk  
Dale Shaver, Director, Waukesha County Parks and Land Use  
Ken Yunker, Southeastern Wisconsin Regional Planning Commission Director  
Mary Elsner, Town of Delafield Clerk  
Lynn Pepper, Town of Eagle Clerk  
Barb Whitmore, Town of Genesee Clerk  
Jeff Musche, Town of Lisbon Administrator  
Susan Oman, Town of Merton Clerk  
Kathy Karalewitz, Town of Mukwonago Clerk  
Lori Opitz, Town of Oconomowoc Clerk  
Melissa Klein, Town of Ottawa Clerk  
Debra Michael, Village of Summit Clerk  
Karen Schuh, Town of Vernon Clerk  
Jamie Salentine, Town of Waukesha Clerk  
Barbara Woppert, Village of Big Bend Clerk  
Kayla Chadwick, Village of Butler Clerk  
Pamela Little, Village of Chenequa Clerk

July 29, 2015

Penny Nissan, Village of Dousman Clerk  
Cheri Zindars, Village of Eagle Clerk  
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Michael Weber, Village of Hales Corners Clerk  
Mary Stredni, Village of Elm Grove Clerk  
Connie Casper, Village of Hartland Clerk  
Lori Boyer, Village of Lac La Belle Clerk  
James Lamb, Village of Lannon Clerk  
Janice Moyer, Village of Menomonee Falls Clerk  
Tom Nelson, Village of Merton Clerk  
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Cynthia Pfeifer, Village of Nashotah Clerk  
Rhoda Bagley, Village of North Prairie Clerk  
Cindy Schlieve, Village of Oconomowoc Lake Clerk  
Nancy Zastrow, Village of Pewaukee Clerk  
Sue Freiheit, Village of Sussex Clerk  
Gail Tamez, Village of Wales Clerk  
Kelly Michaels, City of Brookfield Clerk  
Jim Owczarski, City of Milwaukee Clerk  
Gina Gresch, City of Delafield Clerk  
Sharon Mueller, City of Muskego Clerk  
Kari Morgan, City of New Berlin Clerk  
Diane Coenen, City of Oconomowoc Clerk  
Kelly Tarczewski, City of Pewaukee Clerk  
Tom Neill, City of Waukesha Clerk  
Monica Schultz, City of West Allis Clerk  
Carla Ledesma, City of Wauwatosa Clerk  
Jill Kenda-Lubetski, Village of Brown Deer Clerk  
Julie Kriewaldt, Town of Erin Clerk  
Deanne Hapka, Town of Germantown Clerk  
James Healy, Village of Richfield Administrator  
Keith Henderson, Town of Brookfield Chair



## **EXECUTIVE SUMMARY**

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This document constitutes the Findings and Determination of the Incorporation Review Board on the petition filed by residents of the Town of Brookfield to incorporate a portion of the Towns of Brookfield and Waukesha comprising 4.22 square miles and 6255 people.

The area proposed for incorporation is shown in **Map 1**, at Appendix B. The proposed village would include the primary Town of Brookfield Core Area located at the confluence of Interstate 94 (I-94), US Highway 18, Bluemound Road, and State Highway 164. This core area contains dense neighborhoods, institutions such as schools and churches, and major business development. The area is already fully urbanized. As a result, new development that is occurring is redevelopment at even higher densities, such as the ongoing *The Corners* project, a \$160 million 500,000 square foot department store/residential project. Other town lands are receiving similar redevelopment interest. The Brookfield Town Core Area is one of the busiest intersections in Wisconsin and of significant economic importance to southeast Wisconsin.

Recognizing the Town's need for additional powers to promote redevelopment projects such as *The Corners*, the state legislature passed special legislation in 2011 giving the Town of Brookfield Tax Incremental Financing (TIF) authority. At that time, most Wisconsin towns did not have TIF authority. The Town of Brookfield established its first TIF district, Tax Increment District (TID) #1 on February 18, 2014 for *The Corners* project.

In addition to the Town Core Area, the proposed village would also include two smaller Town of Brookfield island areas that are physically separate from the Town Core Area. These areas are:

- Holly Crest/Gaywood Island – located just off Springdale Drive, roughly one mile north of the Town Core Area, comprised of two subdivisions containing 128 homes;
- Bluemound Road Island – located along Bluemound Road, this area is essentially physically separate from the Town Core Area, connected only via a narrow strip of land 800 feet long and 66 feet wide.

Several other separate Town of Brookfield lands have not been included in the petition and instead are proposed to remain as Town of Brookfield lands.

The petition also includes a piece of territory from the Town of Waukesha. Located in the far northeast corner of the Town, this 288-acre piece is physically separated from the rest of the Town of Waukesha by the Cities of Waukesha and New Berlin. The Town of Waukesha Territory is connected to the Town of Brookfield Core Area.

Subsequent to filing this petition, the legislature enacted 2013 Wisconsin Act 11 which requires express consent by resolution from each town whose territory is included within an incorporation petition. In response to the new legislation, the Town of Waukesha passed a resolution in 2013 and in 2014 expressing its opposition to this incorporation. The impact of 2013 Wisconsin Act 11 on this petition is beyond the scope of duties of the Incorporation Review Board.

The proposed village area is part of a regional community whose other members include not only the Town of Waukesha but also the City of Brookfield to the north and west, the City of New Berlin to the south, the City of Waukesha to the west, City of Pewaukee to the west and north, the Village of Sussex to the north, the Village of Menomonee Falls and the Town of Lisbon to the

North. The Cities of Brookfield and Waukesha, Village of Sussex, and Town of Waukesha appeared at the petition's initial circuit court hearing in 2012, concerned that an incorporated Town of Brookfield will be detrimental to their own interests as well as those of the larger metropolitan community. The court recognized them as Parties in Interest.

On May 3, 2012, Judge Donald Hassin ordered the Board's review process stayed to enable these Parties in Interest communities to attempt mediation with the Town of Brookfield to resolve their concerns. However, the mediation was ultimately unsuccessful. The process was subsequently stayed once more on September 20, 2012 so that legal objections raised by the Town of Waukesha could be heard. Over two years later, on December 4, 2014, the Court of Appeals released its decision, published as *Walt v. City of Brookfield*, 2015 WI App 3. The Court of Appeals also ordered DOA and the Incorporation Review Board to complete its review and issue findings and a determination on the petition. As a result, Judge James Kieffer ordered the Board's review process recommenced on February 1, 2015.

This is the Town of Brookfield's third attempt at incorporation, its two prior attempts coming in 1999 and 2001. Both were dismissed for failure to meet the *Compactness & Homogeneity* and *Impact on the Metropolitan Community* standards. Both the 1999 and 2001 attempts proposed somewhat different boundaries from what is currently being proposed because they included the entire Town of Brookfield, which was split across numerous separate and distinct island areas separated by the City of Brookfield. Also, the 1999 and 2001 petitions did not include any Town of Waukesha Territory.

In 2005 the City of Brookfield and Town of Brookfield participated in a study regarding the feasibility of consolidating the two Brookfields. The City hired and paid for a consultant who gathered and analyzed information from each community and compiled their findings and recommendations in a report titled *One Brookfield*. The City and Town each interpret this report differently. The City interprets the report as recommending that the City and Town consolidate governments, because doing so will lead to significant cost savings, service and efficiency improvements, and enable Brookfield to become a much stronger member of the southeast Wisconsin region.

Meanwhile, the Town interprets the report as finding that consolidation is unfeasible and not in the best interest of either municipality. Acting in response to its interpretation, the Town of Brookfield is pursuing incorporation so as to better maintain itself as a distinct and separate community apart from the City of Brookfield, City of Waukesha, and other municipal neighbors. Doing so would enable Town residents to permanently protect their community's boundaries, a critical aspect since the tax base from these lands is being used to secure bonds being issued for *The Corners* project. Petitioners also desire incorporation in order to administer their own land use regulations independent of the county.

Petitioners urge the Board to grant them incorporation because the Town of Brookfield is essentially already a village, in terms of the services it provides, its population density, and its urban land uses. Also, the legislature granted village TIF powers to the Town in 2011, which petitioners take to be yet another indication that the Town of Brookfield is already a village, except in name.

However, desiring to become a village is not enough. Instead, communities petitioning for incorporation must meet six statutory standards or criteria found in s. 66.0207 Wis. Stats. This

determination and findings is an analysis of the Town of Brookfield's petition in relation to each of the six statutory standards, as summarized below:

1). Compactness & Homogeneity – Currently not met. This standard requires the petitioned territory to be sufficiently compact and uniform to function as a city or village. Factors include existing natural boundaries such as rivers and topography, existing political boundaries, the current and potential transportation network, employment, business, social, and recreational opportunities. A petition may be weaker with certain factors or considerations and stronger with others, but it must show that on balance it supports a finding of compactness and homogeneity.

The Town Core Area of the petition relates very favorably to all of the compact and homogenous factors. This area is well defined by wetland and woodland environmental areas, as well as political boundaries. It contains a fully-developed commercial core, a variety of housing options, a diverse mix of urban land uses, excellent transportation system, a clear sense of community, and a greater population density even than many surrounding cities and villages.

Petitioners have also included the Town of Waukesha Territory, but haven't clearly shown how this area is compact and homogenous to the proposed village. The City of Waukesha believes that this area is compact and homogenous with the City, not with the proposed village.

This petition also includes the Holly Crest/Gaywood and the Bluemound Road island areas, which are physically separate from the primary Town Core Area. In its previous determinations in 1999 and 2001, the Department found these islands to be more homogenous and compact to the City of Brookfield than to the proposed village. The situation appears unchanged 15 years later. The Board recommends re-submitting this petition with the Holly Crest/Gaywood and Bluemound Road islands excluded, and transitioning the islands to neighboring municipalities. The Town Core Area would clearly be found compact and homogenous.

2). Territory Beyond the Core – Met. This standard requires that vacant land included within the proposed village show a potential to be developed to urban uses within the next 3 years. There is essentially no vacant developable territory remaining within the Town of Brookfield. Instead, the development that is occurring is re-development. Therefore, this standard is clearly met.

3). Tax Revenue – Met. This standard ensures that the territory petitioned for incorporation has the capacity to raise sufficient tax revenue to function as a village without unduly burdening residents. Given the proposed village's high assessed value, low debt level, high debt capacity, and the fact that the Town of Brookfield already operates like a village in terms of service provision, clearly the proposed village can raise sufficient revenue without unduly burdening residents.

4). Level of Services – Met. This standard compares the services proposed by petitioners for the new village, which are the same services residents currently receive from the Town of Brookfield, with those proposed by the adjacent City of Brookfield. Both the City and the petitioners propose excellent services that clearly can meet residents' needs and desires. The City cites the 2005 *One Brookfield* study to show that consolidated services are best for the region. However, the statutory standard does not include

regional or efficiency considerations. Instead, the standard is the level of services desired or needed by residents. Because residents already receive services from the Town of Brookfield, and appear to be content with these services, the Board finds the proposed village meets this standard.

5) Impact on the Remainder of the Town – Currently not met. This standard requires the Board to consider the impact that incorporation would have upon remaining Town of Brookfield and Waukesha residents so as to safeguard that incorporation will not negatively impact them. The Board finds that impact on the remaining Town of Waukesha is likely to be minor given that the Town of Waukesha Territory proposed for incorporation constitutes a small portion of the Town's total area, population, and value. This area is already cut off physically from the rest of the Town and ultimately expected to transition into an adjoining municipality.

The situation for the remaining Town of Brookfield is more problematic because of the small and physically scattered remnant with its low population and resulting equalized value. Comparing its current and expected revenues against its predicted and potential liabilities, incorporation could negatively impact the remaining Town and its residents.

Therefore, the Board finds the standard to be met with respect to the remaining Town of Waukesha but not met with respect to the remaining Town of Brookfield.

6) Impact on the Metropolitan Community – Currently not met. This standard ensures that incorporation will not negatively harm the larger metropolitan community. In its 1999 and 2001 determinations, the Department (now Board) noted a critical need for cooperation and reconciliation between the Town and its municipal neighbors. It appears that this need still remains today. However, there are signs that cooperation and reconciliation could occur. For example, the parties did stay this incorporation process in 2012 in order to attempt mediation, and Petitioners and Parties in Interest indicate that the communities have continued to communicate throughout the Board's review process on how to resolve the intergovernmental issues such as the Holly Crest/Gaywood and Bluemound Islands, the remnant Town of Brookfield islands, and the Town of Waukesha Territory. The Board recommends that petitioners and the Town of Brookfield continue to work with their municipal neighbors on resolving these issues

The Board thanks Petitioners and the Parties in Interest for all their testimony and information provided, which greatly facilitated the Board's review.

Given that the petition could be modified so as to meet each of the six statutory standards, the Board recommends that the petition be re-filed with changes. This will require the Town of Brookfield to cooperate with its municipal neighbors to resolve the boundary and regional issues facing this group of communities. It may involve negotiation and study of the issues and alternatives in order to reach a consensus. Many communities across Wisconsin have faced issues and challenges as those faced by the Town of Brookfield. For example, the Village of Summit, Village of Somers, and City of Pewaukee are all examples of communities that have successfully resolved the intergovernmental issues in their regions in order to pave the way for subsequent incorporation.

The Wisconsin legislature has provided communities with the intergovernmental cooperation tools they need to resolve their regional issues, such as the boundary agreement mechanisms provided in ss. 66.0225, 66.0301, 66.0305, and 66.0307 Wis. Stats. Copies of successful



boundary agreements and communities are available on the Department of Administration's website at: <http://doa.wi.gov/municipalboundaryreview>, along with guides, fact sheets, FAQs, checklists, and other information to assist communities in developing boundary agreements.

The Board wishes the best of success for Town of Brookfield as it works with its municipal neighbors to resolve the issues that lie between it and incorporation.

