

Wisconsin Towns Association

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To: Special Committee on Municipal Annexation

From: Richard J. Stadelman, Executive Director

Re: Possible Issues for Committee Review

Date: October 12, 2004

On behalf of Wisconsin Towns Association, I would like to offer the following possible items for the Special Committee to review to reduce annexation disputes and encourage more boundary cooperation between towns and cities/villages.

First, I would refer the Special Committee to the attached summary of some background information on boundary changes since January 1, 2000 as of June, 2004. This information is a summary from the Department of Administration, Demographics Services Center Home website listed under Wisconsin Geography, Maps and Graphics as shown on the attachment.

Next although not all 1,764 annexations during the period of time from January 1, 2000 to June, 2004 resulted in litigation, many have been contested or at the very minimum have resulted in confrontation between towns and the cities/villages. Litigation results in costs for attorneys to both units of government, possible delays in potential development for property owners in the proposed annexed areas, and possible confusion for property owners and residents in the proposed annexed areas. The general animosity that exists between towns and villages/cities from annexation disputes can not be measured in dollars, but often results in perceived barriers to cooperation on other intergovernmental services that could result in cost savings and improved delivery of services. I raise these general statements in response to the Special Committee's charge to review conflicts that arise under the current annexation law and practice and the "consequences of those conflicts, including costs to taxpayers and other affected parties."

In my opinion, one of the main reasons that these conflicts exist is because current annexation laws are weighted in the favor of cities and villages too heavily to the complete lack of recognition of the town and the remaining taxpayers in the town. Wisconsin Towns Association would contend that balancing the table in boundary issues would reduce the conflict between the units of government involved and thus reduce the costs of litigation, impacts on property owners and residents within and outside the annexed areas, and encourage more intergovernmental cooperation on boundary issues which would be followed by more cooperation on delivery of services.

The following suggestions from Wisconsin Towns Association are aimed at encouraging cooperative boundary agreements and to level the playing field between towns and cities/villages. These suggestions have been presented in the development of our Association's legislative agenda.

(1) Introduce and pass legislation to create "charter towns."

This legislation would be similar to 2003 AB 136 in this last legislative session as amended by committee. It would provide that towns over 2,500 in population and provide an urbanized level of service to its residents could declare themselves a "charter town" and gain boundary protection from annexation and extraterritorial controls of the neighboring cities and villages. (See attached Legislative Council Amendment Memo.)

Based upon DOA population estimates for 1/1/04, 134 towns are over 2,500 in population, however far fewer would meet the urbanized service levels for municipal sewer or water and 24 hour law enforcement. It is my belief that currently less than 25 towns would meet all the requirements as listed under the substitute amendment in 2003 AB 136.

Creation of charter towns would take the threat of annexation away from the largest most urbanized towns in Wisconsin. It is a concept based upon a law that the State of Michigan has had since the 1970's. Michigan has many charter towns with this boundary protection, yet it has not stopped economic growth and development in their state, while reducing boundary conflicts. The protection given to the towns that qualify will result in those towns remaining towns and not seeking incorporation as villages or cities, which has in the past merely meant a new municipality exists to annex from other towns, thus moving the boundary disputes typically six miles further away.

If provisions need to be added to make the "charter towns" concept more acceptable Wisconsin Towns Association is willing to work with your committee and other interested associations to gain passage and enactment of this bill as a law in Wisconsin.

(2) Introduce and pass legislation which requires that the city or village must have town agreement to exercise extraterritorial plat review.

This legislation would be similar to 2003 SB 88. (See copy of bill attached.) The exercise of city and village extraterritorial plat review has become more confrontational in the last two years as a result of the Wisconsin Supreme Court decision in the case of Wood v. City of Madison (2003 WI 24), decided 04/11/03. In this case the Supreme Court on a 4-3 split decision decided that the city could deny a plat/land division on the grounds that the proposed land uses in the plat/land division were not consistent with the city land use plan. This case greatly increased the city authority over development in the extraterritorial area without any recourse to the town. This authority has already been used and continues to be used by other cities and villages in Wisconsin to deny developments in the extraterritorial areas unless the property owners seeking the plat/land division are willing to annex to the city or village. This extension of land use authority without agreement of the town is in direct conflict with Sec. 62.23 (7e) of Wis. Statutes which requires the city or village to come to agreement with the town to exercise extraterritorial zoning in the town. SB 88 would return the status of the law to what the legislature intended for extraterritorial zoning and would encourage cooperation

on boundary development rather than the only development occurring if the land is annexed. Please note that SB 88 provided for a delayed effective date of two years from publication (if passed) to give towns, villages, and cities to come to agreements on these matters. Wisconsin Towns Association believes that town approval of extraterritorial plat authority by cities and villages will encourage broader boundary agreements on such issues as sewer and water extensions, a key to development in these areas. We would also encourage that such sewer and water extensions be conditioned upon tax sharing where the parties agree. This would result in a win-win situation for all parties whether the land is annexed or remains in the town.

(3) Introduce and pass legislation that would require that town's official maps must be incorporated into county development plans (which is the same status that cities and villages currently have).

This legislation would be similar to 2003 SB 110 and 2003 AB 340. These bills were identical. 2003 AB 340 passed the Assembly but no action in the Senate. The legislative analysis by the Legislative Reference Bureau is attached to this memo. This bill would balance the table between towns and cities/villages by allowing the town to incorporate into the county development plan the town official map the same status as the city and village official maps have. This bill does require that for the town official map to be incorporated into the county development plan it must have adopted a town comprehensive plan under Sec. 66.1001 of Wis. Statutes and that the town official map must be consistent with such plan. This bill would encourage comprehensive plans and give the same authority to towns as cities and villages currently have when adopting an official map.

(4) Introduce and pass legislation which would limit the annexation of city or village owned land under Sec. 66.0223 of Wis. Statutes to land necessary only for public service use or recreational use. This would prohibit a city or village from purchasing land which is not adjacent to the city or village and annexing such land for industrial or residential uses. No bills have been introduced in the past on this subject, however, several cities have annexed owned land that was not adjacent to the city for purposes other than a public service use (such as wastewater sewer treatment plant or municipal water well) or recreational use (such as a park). These annexations for other purposes have created city or village islands within the town which have been used for industrial and residential uses created irregular boundaries and delivery of municipal service issues from fire, ambulance to police and more. By limiting the annexation of city or village owned land to public service use or recreational use, the conflicts and problems from irregular boundary lines would be reduced.

(5) Introduce and pass legislation which would change Sec. 66.0217 (6) of Wis. Statutes to provide that the Department of Administration review of annexations should be binding and applicable in all counties not just counties over 50,000 in population. The current review of annexations is only in counties over 50,000 in population and is only advisory. A finding that the proposed annexation is or is not in the "public interest" should be binding and controlling on the issue for all annexations in all counties.

Other ideas that some of our members have suggested that could be considered by the Special Committee to reduce conflict on boundary issues:

(6) Require that annexation lines follow more defined boundaries, such as was suggested in the original 2003 SB 87 introduced this last session. This bill originally proposed that annexation lines must follow natural boundaries (such as rivers or lakes) or man-made boundaries (such as railroad right of ways or center of highways) or quarter-quarter section lines. There have been many annexations which have created haphazard boundaries between cities/villages and towns which have caused irregular borders for rational delivery of service.

(7) Modify the current Cooperative Boundary Procedures under Sec. 66.0307 of Wis. Statutes to shorten the timeline required for state approval of cooperative boundary agreements entered by towns, villages, and cities. This statute was enacted to give boundary agreements a stronger legal status if approved by the State Department of Administration. The law provides that such agreements must be based upon a cooperative plan and agreement. Such agreements have been fairly limited to date, due in part to the concern of some that the procedure is too cumbersome and time consuming. The timeline was enacted in part to protect property owners and residents rights when cooperative agreements are intended to control boundary changes by agreement rather than the annexation law. The Special Committee may be able to address changes which can streamline the process while protecting these property interests. One of the options may be to establish a deadline for the decision for the Department of Administration similar to the review in incorporation reviews adopted in this past session.

(8) Consideration should be given by the Special Committee to the possible abuse of unanimous direct annexations by cities and villages in view of the change enacted in 2003 Wis. Act 317 that towns are prohibited from any legal action, whether procedural or jurisdictional, to contest the validity of such unanimous direct annexations. Some cities and villages have adopted annexations of a string of property owners into the town with only one property owner being adjacent to the city. These annexations have created city or village peninsulas extending substantial distances into the town. Such annexations on their face may well be subject to being overturned by the "rule of reason" as described in the staff memo for the Special Committee on page 12-13. Act 317 restricts the town from challenging abuses created by unanimous direct annexations. Property owners in the town do not have standing to challenge such annexations. A possible solution would be to limit unanimous direct annexations to no more than one or two parcels from the existing city or village borders. Another option would be to modify the Act 317 to allow challenges to unanimous direct annexations that extend more than two parcels beyond existing borders. Also combinations of unanimous direct annexations over a period of time (such as five years) should also be subject to challenge.

(9) In general new incentives to encourage cooperative boundary agreements should be explored. These incentives could be financial, such as additional dollars in state aid, or exceptions from limits, such as tax freezes or levy limits if they are imposed in the

future. Our Association would consider regional incentives that would allow the region to share in additional revenues conditioned upon existing boundary agreements. At one time our Association had discussed an agreement with the Alliance of Cities and League of Wisconsin Municipalities to create an exemption from the county property tax for county sheriffs department (not including the county jail) for those towns, villages, and cities that provided their own law enforcement and had boundary agreements with a majority of their neighboring counterpart towns, villages, or cities. While I do not have any specifics that I would urge the Special Committee to adopt, I believe that more detailed discussions could possibly come up with new and creative incentives to encourage cooperative boundary agreements.

In conclusion, Wisconsin Towns Association supports and encourages towns, villages, and cities to seek and enter cooperative boundary agreements. However, it is our view that current annexation laws are weighted in favor of cities and villages too heavily to encourage cities and villages to enter such agreements in most cases. Changing the law to allow for "charter towns," or reforming the extraterritorial powers of cities and villages to require cooperative agreements, and/or revisions in the annexation procedures would result in more cooperation on a voluntary basis between towns, villages and cities. Our Association stands ready to work with your Special Committee to seek ideas and possible answers to these boundary conflicts.

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Some Background Information on Boundary Changes
Source DOA Website @ <http://www.doa.state.wi.us/dir/index.asp>
Under Census and Population Information
Demographics Services Center Home
Wisconsin Geography, Maps and Graphics

- List of Territory Changes between Municipalities since January 1, 2000 (as of June 2004)

Number of Boundary Changes from January 1, 2000 to June, 2004

Includes Annexations, Incorporations, and Detachments 1,764

Annexations (Total population change 17,506) 1,718

Incorporations 6

Village of Bellevue (whole town) date of 2/14/03 12,801 population

Village of Hobart (whole town) date of 5/13/02 5,176 "

Village of Suamico (whole town) date of 9/2/03 6,579 "

Village of Lake Hallie (portion of town) date of 2/28/03 4,737 "

Village of Kronenwetter (portion of town) 11/20/02 5,332 " **

Village of Mount Pleasant (whole town) 9/16/03 23,882 "

(Total population change 47,507 ")

** { New Village of Kronenwetter annexed remaining Town of Kronenwetter with 937 additional population within three months of approval of incorporation }

Detachments (Total population change 408) 50

Website indicates only six annexations as result of boundary agreement



WISCONSIN LEGISLATIVE COUNCIL AMENDMENT MEMO

2003 Assembly Bill 136

**Assembly Substitute
Amendment 1, as Amended by
Assembly Amendment 2**

Memo published: May 19, 2003

Contact: Rachel Letzing, Staff Attorney (266-3370)

Assembly Substitute Amendment 1 to 2003 Assembly Bill 136 authorizes the creation of charter towns by certain town boards. The substitute amendment makes one major change to the bill: Assembly Bill 136 authorizes all towns to establish tax incremental financing districts, while the substitute amendment specifies that only charter towns may establish tax incremental financing districts.

Eligibility Criteria

Under the substitute amendment, a town is eligible to become a charter town if it meets all of the following: (1) the town board is authorized to exercise village powers; (2) the town has a population of at least 2,500; (3) the town board creates and maintains a town plan commission; (4) the town board enacts a comprehensive zoning ordinance and establishes an official town map; (5) the town board adopts a comprehensive land use plan; (6) the town board enacts a construction site erosion control and storm water management zoning ordinance; (7) the town board enacts a subdivision ordinance; and (8) the town board enacts and enforces building code ordinances.

Procedure to Become a Charter Town

An eligible town may become a charter town by following the procedure set forth in the substitute amendment: (1) the town board adopts a resolution declaring its intent to become a charter town; and (2) the town board calls a referendum to ratify the resolution at the next spring primary or election or September primary or general election. The referendum must be approved by a majority of the electors.

Effects of Becoming a Charter Town

Under the substitute amendment, a charter town is not subject to extraterritorial zoning or plat approval. A charter town is also not subject to county zoning (except wetlands in shorelands zoning), adopted after the town becomes a charter town, unless approved by the town board. A charter town board may revoke its past approval of any county zoning ordinance (except wetlands in shorelands zoning). After revoking county zoning, a charter town may enact its own zoning ordinance.

The substitute amendment specifies that a county development plan for the development of unincorporated territory in the county may not include areas in a charter town, unless the charter town board by resolution agrees to having their areas included in the county development plan. Also, a county development plan must include the master plan, if any, of a charter town and the official town map established by a charter town.

The substitute amendment authorizes a charter town to create a tax incremental financing district.

Under the substitute amendment, certain charter towns are protected from annexation and from certain other property acquisitions by a city or village, unless approved by the town board. The protection applies to charter towns meeting the following conditions:

1. The equalized value of the town exceeds \$100 million, according to the most recent assessment.
2. At least 10% of town residents receive either water supply or sewage disposal services, or both, from one of the following: a town sanitary district created by the town, a town utility district, a metropolitan sewerage district, a public utility, a town sanitary district created by another town, a city, or village.
3. The town provides law enforcement services 24 hours a day.

Municipal Water Utilities--Service Connections Through Adjacent Municipalities

Under **current law**, if a municipality operating a water system wants to install service connections within the boundaries of an adjacent municipality, the municipality may file a petition with the adjacent municipality requesting approval for the installation. If the adjacent municipality rejects the request, the petitioning municipality may appeal the Public Service Commission (PSC) for permission to install the service connections. After a hearing, the PSC may issue an order authorizing the petitioning municipality to install service connections within the boundaries of the adjacent municipality.

Under the **substitute amendment**, the petitioning municipality may not appeal to the PSC for permission to install service connections within the boundaries of a town. In addition, the PSC may not issue an order authorizing the petitioning municipality to install service connections within the boundaries of a town. This provision applies to all towns, not only charter towns.

Assembly Amendment 2 deletes the language that amends the provisions of current law authorizing a petitioning municipality to appeal to the PSC, and the ability of the PSC to issue an order authorizing a petitioning municipality to install service connections within the boundaries of an adjacent municipality. Thus, current law regarding this PSC appeal procedure is unchanged.

Legislative History

Assembly Substitute Amendment 1 was offered by Representative Owens on April 4, 2003. The Assembly Committee on Rural Affairs recommended adoption of Assembly Substitute Amendment 1 to Assembly Bill 136 on May 8, 2003 by a vote of Ayes, 7; Noes, 2.

Assembly Amendment 2 to Assembly Substitute Amendment 1 was offered by Representative Owens on May 6, 2003. The committee recommended adoption of Assembly Amendment 2 to Assembly Substitute Amendment 1 on May 8, 2003 by a vote of Ayes, 9; Noes, 0.

On May 8, 2003, the Assembly Committee on Rural Affairs recommended passage of Assembly Bill 136, as amended, by a vote of Ayes, 6; Noes, 3.

2003 SENATE BILL 88

April 2, 2003 - Introduced by Senators A. LASEE and BRESKE, cosponsored by Representatives AINSWORTH, BIES, FREESE, GRONEMUS, GUNDERSON, HAHN, HINES, LADWIG, M. LEHMAN, MUSSEY, OTT and OWENS. Referred to Committee on Homeland Security, Veterans and Military Affairs and Government Reform.

1 AN ACT *to amend* 236.10 (1) (b) 2. of the statutes; **relating to:** extraterritorial
2 plat approval.

Analysis by the Legislative Reference Bureau

Under current law, a developer who wishes to subdivide an extraterritorial plat (the unincorporated area within three miles of the corporate limits of a first, second, or third class city, or within one and a half miles of a fourth class city or village) must obtain the approval of the town board and of the governing body of the municipality (an incorporated city or village) by the body's adoption of a subdivision ordinance or an official map.

This bill also requires that the town board show its approval of the municipality's ordinance or map by adopting a resolution.

For further information see the *local* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

3 SECTION 1. 236.10 (1) (b) 2. of the statutes is amended to read:

4 236.10 (1) (b) 2. The governing body of the municipality if, by July 1, 1958, or
5 thereafter it adopts a subdivision ordinance or an official map under s. 62.23, and the
6 town board has approved the subdivision ordinance or official map by resolution; and

SENATE BILL 88

SECTION 2. Effective date.

(1) This act takes effect on the first day of the 25th month beginning after publication.

(END)

2003 ASSEMBLY BILL 340

May 13, 2003 – Introduced by Representatives ALBERS, AINSWORTH, BIES, GRONEMUS, HINES, KESTELL, KRAWCZYK, M. LEHMAN, LEMAHIEU, MCCORMICK, MUSSER, OTT, OWENS, TOWNS and VAN ROY, cosponsored by Senators A. LASEE, KANAVAS and KEDZIE. Referred to Committee on Property Rights and Land Management.

1 AN ACT *to renumber and amend* 59.69 (3) (b); *to amend* 59.69 (1) and 59.69
2 (3) (e); and *to create* 59.69 (3) (b) 1. to 4. and 60.23 (32) of the statutes; **relating**
3 **to:** expanding town authority to create an official map and the status of an
4 official town map.

Analysis by the Legislative Reference Bureau

Under current law, a county board may engage in zoning and land use planning by creating a county planning agency or by designating a previously constituted county committee or commission as the county planning agency. If a county board creates or designates such an agency, the agency is required to direct the preparation of a county development plan for the physical development of the towns within the county and for the cities and villages within the county whose governing bodies agree to have their areas included in the county plan.

Current law requires that the county development plan include the master plan and official map of a city or village in the county, and that a city or village master plan and official map control in the city's or village's extraterritorial zoning jurisdiction over a county development plan that affects that same area. A city's or village's extraterritorial zoning jurisdiction consists of unincorporated areas (town or county territory) within three miles of the corporate limits of a first, second, or third class city or within one and a half miles of a fourth class city or a village.

Current law allows a town to adopt an official map under certain situations if the town is located in a county that has not enacted a county zoning ordinance.

ASSEMBLY BILL 340

This bill authorizes a town to adopt an official map at any time. The bill requires that a county development plan include both the official map of any town in the county that has adopted a comprehensive plan and the comprehensive plan, which is defined under current law as a plan that must contain planning elements including the following: housing; transportation; utilities and community facilities; agricultural, natural, and cultural resources; economic development; and land use. Also under the bill, a city's or village's master plan and official map control in the city's or village's extraterritorial zoning jurisdiction only if an official town map is not part of the county development plan.

For further information see the *local* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 59.69 (1) of the statutes is amended to read:

2 **59.69 (1) PURPOSE.** It is the purpose of this section to promote the public health,
3 safety, convenience, and general welfare; to encourage planned and orderly land use
4 development; to protect property values and the property tax base; to permit the
5 careful planning and efficient maintenance of highway systems; to ensure adequate
6 highway, utility, health, educational, and recreational facilities; to recognize the
7 needs of agriculture, forestry, industry, and business in future growth; to encourage
8 uses of land and other natural resources which are in accordance with their character
9 and adaptability; to provide adequate light and air, including access to sunlight for
10 solar collectors and to wind for wind energy systems; to encourage the protection of
11 groundwater resources; to preserve wetlands; to conserve soil, water, and forest
12 resources; to protect the beauty and amenities of landscape and man-made
13 developments; to provide healthy surroundings for family life; and to promote the
14 efficient and economical use of public funds. To accomplish this purpose, the board
15 may plan for the physical development and zoning of territory within the county as
16 set forth in this section and shall incorporate therein the master plan adopted under