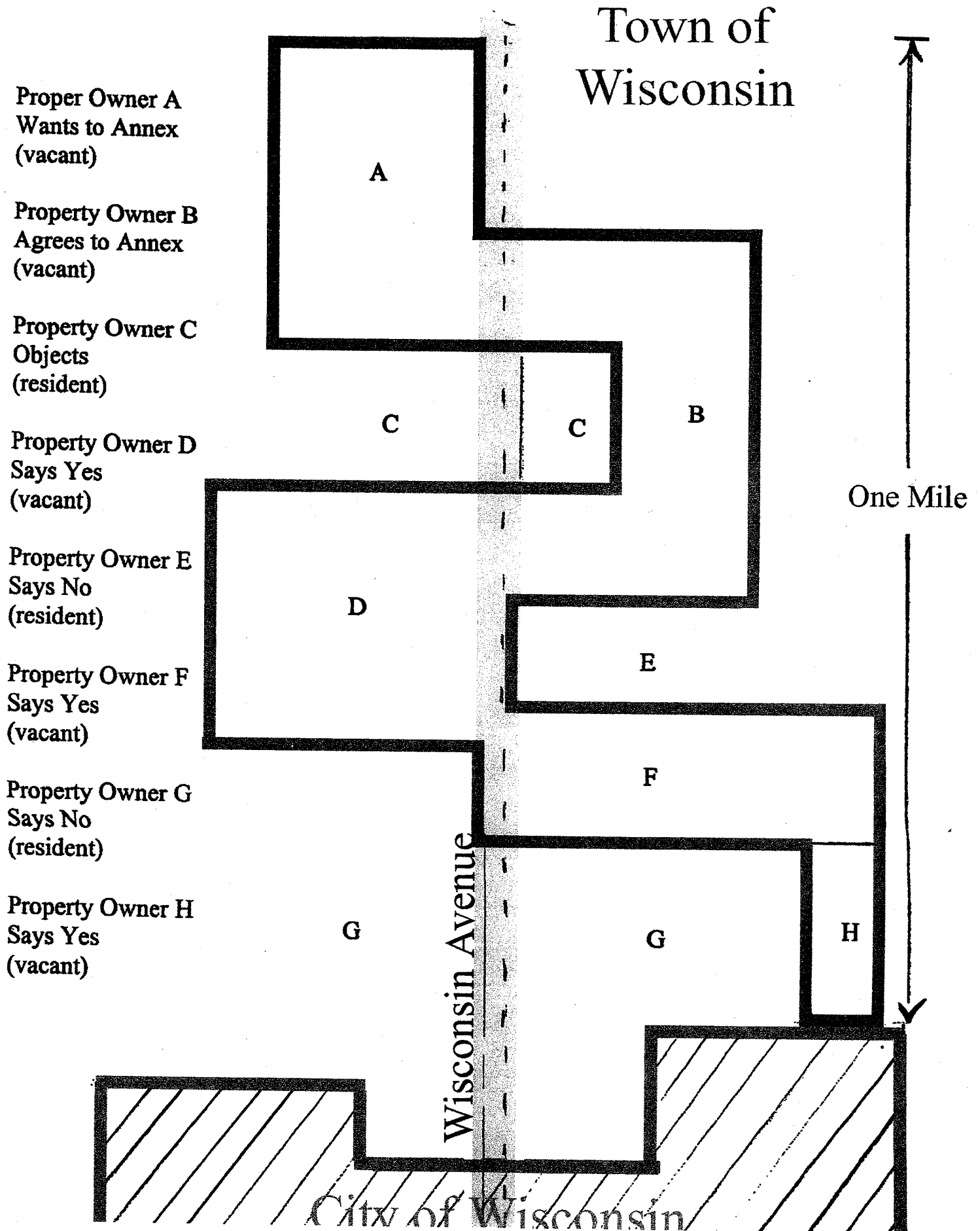


PROPOSED FOR AMENDMENT 2003 WIS. ACT 317

2003 Wis. Act 317 analysis does not appear to have been carefully considered as it relates to the potential abuse by the city/village. In its present form has the potential for large irregular annexations resulting in a lack of orderly growth and development. It could clearly give rise to municipal boundaries that are difficult and costly to administer.

(See attached graphic)

POTENTIAL ANNEXATION UNDER 2003 WIS. ACT 317



Proposed amendment concept for discussion:

Town shall not contest unanimous annexation unless:

- Annexation includes more than two parcels or two property owners
- Town may also contest where any unanimous consent annexation is contiguous to the city/village when attached all or in part to a unanimous consent annexation that occurred within five (5) years of the current annexation.

2003 Senate Bill 87

Date of enactment: April 22, 2004

Date of publication*: May 6, 2004

2003 WISCONSIN ACT 317

AN ACT *to renumber and amend 66.0223; to amend 66.0217 (2), 66.0217 (3) (intro.), 66.0219 (intro.) and 66.0221 (1); and to create 66.0217 (11) (c), 66.0217 (14), 66.0219 (10), 66.0221 (3) and 66.0223 (2) of the statutes; relating to: limiting the authority of cities and villages to annex territory and specifying the boundaries for certain annexations.*

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

SECTION 1. 66.0217 (2) of the statutes is amended to read:

66.0217 (2) DIRECT ANNEXATION BY UNANIMOUS APPROVAL. If Except as provided in sub. (14), and subject to s. 66.0307 (7), if a petition for direct annexation signed by all of the electors residing in the territory and the owners of all of the real property in the territory is filed with the city or village clerk, and with the town clerk of the town or towns in which the territory is located, together with a scale map and a legal description of the property to be annexed, an annexation ordinance for the annexation of the territory may be enacted by a two-thirds vote of the elected members of the governing body of the city or village without compliance with the notice requirements of sub. (4). In an annexation under this subsection, subject to sub. (6), the person filing the petition with the city or village clerk and the town clerk shall, within 5 days of the filing, mail a copy of the scale map and a legal description of the territory to be annexed to the department and the governing body shall review the advice of the department, if any, before enacting the annexation ordinance.

SECTION 2. 66.0217 (3) (intro.) of the statutes is amended to read:

66.0217 (3) OTHER METHODS OF ANNEXATION. (intro.) Subject to s. 66.0307 (7), and except as provided in sub. (14), territory contiguous to a city or village may be annexed to the city or village in the following ways:

SECTION 3. 66.0217 (11) (c) of the statutes is created to read:

66.0217 (11) (c) No action on any grounds, whether procedural or jurisdictional, to contest the validity of an annexation under sub. (2), may be brought by any town.

SECTION 4. 66.0217 (14) of the statutes is created to read:

66.0217 (14) LIMITATIONS ON ANNEXATION AUTHORITY. (a) 1. Except as provided in subd. 2., no territory may be annexed by a city or village under this section unless the city or village agrees to pay annually to the town, for 5 years, an amount equal to the amount of property taxes that the town levied on the annexed territory, as shown by the tax roll under s. 70.65, in the year in which the annexation is final.

2. No payments under subd. 1. must be made if the city or village, and the town, enter into a boundary agreement under s. 66.0225, 66.0301, or 66.0307.

(b) No territory may be annexed by a city or village under this section if no part of the city or village is located

* Section 991.11, WISCONSIN STATUTES 2001-02 : Effective date of acts. "Every act and every portion of an act enacted by the legislature over the governor's partial veto which does not expressly prescribe the time when it takes effect shall take effect on the day after its date of publication as designated" by the secretary of state [the date of publication may not be more than 10 working days after the date of enactment].

in the same county as the territory that is subject to the proposed annexation unless all of the following occur:

1. The town board adopts a resolution approving the proposed annexation.

2. The county board of the county in which the territory is located adopts a resolution approving the proposed annexation.

SECTION 5. 66.0219 (intro.) of the statutes is amended to read:

66.0219 Annexation by referendum initiated by city or village. (intro.) As a complete alternative to any other annexation procedure, and subject to sub. (10) and s. 66.0307 (7), unincorporated territory which contains electors and is contiguous to a city or village may be annexed to the city or village under this section. The definitions in s. 66.0217 (1) apply to this section.

SECTION 6. 66.0219 (10) of the statutes is created to read:

66.0219 (10) LIMITATIONS ON ANNEXATION AUTHORITY. (a) 1. Except as provided in subd. 2., no territory may be annexed by a city or village under this section unless the city or village agrees to pay annually to the town, for 5 years, an amount equal to the amount of property taxes that the town levied on the annexed territory, as shown by the tax roll under s. 70.65, in the year in which the annexation is final.

2. No payments under subd. 1. must be made if the city or village, and the town, enter into a boundary agreement under s. 66.0225, 66.0301, or 66.0307.

(b) No territory may be annexed by a city or village under this section if no part of the city or village is located in the same county as the territory that is subject to the proposed annexation unless all of the following occur:

1. The town board adopts a resolution approving the proposed annexation.

2. The county board of the county in which the territory is located adopts a resolution approving the proposed annexation.

SECTION 7. 66.0221 (1) of the statutes is amended to read:

66.0221 (1) Upon its own motion and subject to sub. (3) and s. 66.0307 (7), a city or village, by a two-thirds vote of the entire membership of its governing body, may enact an ordinance annexing territory which comprises a portion of a town or towns and which was completely surrounded by territory of the city or village on December 2, 1973. The ordinance shall include all surrounded town areas except those that are exempt by mutual agreement of all of the governing bodies involved. The annexation ordinance shall contain a legal description of the territory and the name of the town or towns from which the territory is detached. Upon enactment of the ordinance, the city or village clerk immediately shall file 6 certified copies of the ordinance in the office of the secretary of state, together with 6 copies of a scale map. The secretary of state shall forward 2 copies of the ordinance

and scale map to the department of transportation, one copy to the department of natural resources, one copy to the department of revenue and one copy to the department of administration. This subsection does not apply if the town island was created only by the annexation of a railroad right-of-way or drainage ditch. This subsection does not apply to land owned by a town government which has existing town government buildings located on the land. No town island may be annexed under this subsection if the island consists of over 65 acres or contains over 100 residents. Section 66.0217 (11) applies to annexations under this subsection. Except as provided in sub. (2), after December 2, 1973, no city or village may, by annexation, create a town area which is completely surrounded by the city or village.

SECTION 8. 66.0221 (3) of the statutes is created to read:

66.0221 (3) (a) 1. Except as provided in subd. 2., no territory may be annexed by a city or village under this section unless the city or village agrees to pay annually to the town, for 5 years, an amount equal to the amount of property taxes that the town levied on the annexed territory, as shown by the tax roll under s. 70.65, in the year in which the annexation is final.

2. No payments under subd. 1. must be made if the city or village, and the town, enter into a boundary agreement under s. 66.0225, 66.0301, or 66.0307.

(b) No territory may be annexed by a city or village under this section if no part of the city or village is located in the same county as the territory that is subject to the proposed annexation unless all of the following occur:

1. The town board adopts a resolution approving the proposed annexation.

2. The county board of the county in which the territory is located adopts a resolution approving the proposed annexation.

SECTION 9. 66.0223 of the statutes is renumbered 66.0223 (1) and amended to read:

66.0223 (1) In addition to other methods provided by law and subject to sub. (2) and ss. 59.692 (7) and 66.0307 (7), territory owned by and lying near but not necessarily contiguous to a village or city may be annexed to a village or city by ordinance enacted by the board of trustees of the village or the common council of the city, provided that in the case of noncontiguous territory the use of the territory by the city or village is not contrary to any town or county zoning regulation. The ordinance shall contain the exact description of the territory annexed and the names of the towns from which detached, and attaches the territory to the village or city upon the filing of 7 certified copies of the ordinance in the office of the secretary of state, together with 7 copies of a plat showing the boundaries of the territory attached. Two copies of the ordinance and plat shall be forwarded by the secretary of state to the department of transportation, one copy to the department of administration, one copy to the department

of natural resources, one copy to the department of revenue and one copy to the department of public instruction. Within 10 days of filing the certified copies, a copy of the ordinance and plat shall be mailed or delivered to the clerk of the county in which the annexed territory is located. Section 66.0217 (11) applies to annexations under this section.

SECTION 10. 66.0223 (2) of the statutes is created to read:

66.0223 (2) No territory may be annexed by a city or village under this section if no part of the city or village is located in the same county as the territory that is subject to the proposed annexation unless all of the following occur:

(a) The town board adopts a resolution approving the proposed annexation.

(b) The county board of the county in which the territory is located adopts a resolution approving the proposed annexation.

(c) The city or village, and the town, enter into a boundary agreement under s. 66.0225, 66.0301, or 66.0307.

SECTION 11. Initial applicability.

(1) This act first applies to any annexation that has not taken effect on the effective date of this subsection.

(8) **ANNEXATION ORDINANCE.** (a) An ordinance for the annexation of the territory described in the annexation petition under sub. (3) may be enacted by a two-thirds vote of the elected members of the governing body not less than 20 days after the publication of the notice of intention to circulate the petition and not later than 120 days after the date of filing with the city or village clerk of the petition for annexation or of the referendum election if favorable to the annexation. If the annexation is subject to sub. (6) the governing body shall first review the reasons given by the department that the proposed annexation is against the public interest. Subject to s. 59.692 (7), an ordinance under this subsection may temporarily designate the classification of the annexed area for zoning purposes until the zoning ordinance is amended as prescribed in s. 62.23 (7) (d). Before introduction of an ordinance containing a temporary classification, the proposed classification shall be referred to and recommended by the plan commission. The authority to make a temporary classification is not effective when the county ordinance prevails during litigation as provided in s. 59.69 (7).

(b) The ordinance may annex the territory to an existing ward or may create an additional ward.

(c) The annexation is effective upon enactment of the annexation ordinance. The board of school directors in a 1st class city is not required to administer the schools in any territory annexed to the city until July 1 following the annexation.

(9) **FILING REQUIREMENTS; SURVEYS.** (a) The clerk of a city or village which has annexed territory shall file immediately with the secretary of state 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. Failure to file, record or send does not invalidate the annexation and the duty to file, record or send is a continuing one. The ordinance that is filed, recorded or sent shall describe the annexed territory and the associated population. The information filed with the secretary of state shall be utilized in making recommendations for adjustments to entitlements under the federal revenue sharing program and distribution of funds under ch. 79. The clerk shall certify annually to the secretary of state and record with the register of deeds a legal description of the total boundaries of the municipality as those boundaries existed on December 1, unless there has been no change in the 12 months preceding.

(b) Within 10 days of receipt of the ordinance, certificate and plat, the secretary of state shall forward 2 copies of the ordinance, certificate and plat to the department of transportation, one copy to the department of administration, one copy to the department of revenue, one copy to the department of public instruction, one copy to the department, one copy to the department of natural resources, one copy to the department of agriculture, trade and consumer protection and 2 copies to the clerk of the municipality from which the territory was annexed.

(c) Any city or village may direct a survey of its present boundaries to be made, and when properly attested the survey and plat may be filed in the office of the register of deeds in the county in which the city or village is located. Upon filing, the survey and plat are prima facie evidence of the facts set forth in the survey and plat.

(10) **QUALIFICATIONS OF ELECTORS AND OWNERS; ELECTOR DETERMINATION.** (a) Under this section, qualifications as to electors and owners shall be determined as of the date of filing a petition, except that all qualified electors residing in the territory proposed for annexation on the day of a referendum election may vote in the election. Residence and ownership shall be bona fide and not acquired for the purpose of defeating or invalidating the annexation proceedings.

(b) For purposes of this section, if a number of electors cannot be determined on the basis of reported election statistics, the number shall be determined in accordance with s. 60.74 (6).

(11) **ACTION TO CONTEST ANNEXATION.** (a) An action on any grounds, whether procedural or jurisdictional, to contest the validity of an annexation shall be commenced within the time after adoption of the annexation ordinance provided by s. 893.73 (2). During the action, the application of, and jurisdiction over, any county zoning in the area annexed is as provided under s. 59.69 (7).

(b) An action contesting an annexation shall be given preference in the circuit court.

(12) **VALIDITY OF PLATS.** If an annexation is declared invalid but before the declaration and subsequent to the annexation a plat is submitted and is approved as required in s. 236.10 (1) (a), the plat is validly approved despite the invalidity of the annexation.

(13) **EFFECTIVE DATE OF ANNEXATIONS.** Because the creation of congressional, legislative, supervisory and aldermanic districts of equal population is a matter of statewide concern, any annexation action that affects a tract of land that is the subject of an ordinance enacted or resolution adopted by any city during the period from January 1, 1990, to April 1, 1991, or any later date, expressing an intent to not exercise the city's authority to annex territory before April 1, 1991, or the specified later date, taken by a municipality during the period beginning on April 1 of the year commencing after each federal decennial census of population and ending on June 30 of the year commencing after that census, is effective on July 1 of the year commencing after that census or at such later date as may be specified in the annexation ordinance. This subsection first applies to annexations effective after March 31, 1991.

History: 1973 c. 37, 90, 143, 333; 1977 c. 29 ss. 698, 1654 (8) (c); 1977 c. 187 s. 134; 1977 c. 315, 447; 1979 c. 323; 1979 c. 361 s. 112; 1983 a. 29, 189, 219; 1985 a. 225; 1987 a. 391; 1989 a. 192; 1991 a. 5, 39, 269, 316; 1993 a. 16, 247, 301, 329, 491; 1995 a. 27 ss. 3308 to 3312, 9116 (5), 9145 (1); 1995 a. 201, 225; 1997 a. 27; 1999 a. 96; 1999 a. 150 ss. 44 to 47, 49 to 60, 63 to 65; Stats. 1999 s. 66.0217; 1999 a. 182 s. 197; s. 13.93 (2) (c).

Cross-reference: See s. 62.071 for special provision for annexations to cities of the first class.

In ascertaining whether a petition for annexation has been signed by the "owners of one-half of the land" in the proposed area of attachment, acreage within the territory constituting public streets and alleys is not to be taken into account in determining the sufficiency of the petition, no matter how owned or by whom. *International Paper Co. v. Fond du Lac*, 50 Wis. 2d 529, 184 N.W.2d 834.

When an owner petitions for the annexation of a sizable block of land, it is not void simply because it divides the town into 2 parts. *Town of Waukechon v. Shawano*, 53 Wis. 2d 593, 193 N.W.2d 661.

When city limits did not extend the full width of a city-owned road, property on the other side is still contiguous. When the boundaries of the parcel to be annexed were drawn by the petitioning landowners, the city could not be charged with arbitrary action. *Town of Lyons v. Lake Geneva*, 56 Wis. 2d 331, 202 N.W.2d 228.

When property owners, in petitioning for annexation, divide a tract so as to control one parcel by property owners and the other by population, the 2 resulting annexations are valid. *Town of Waukesha v. City of Waukesha*, 58 Wis. 2d 525, 206 N.W.2d 585.

Abundant benefits to the state from the annexation under review, including the provision of police, fire and solid waste disposal services and library and recreational facilities satisfied the need factor of the rule of reason, since absent unfair inducement or pressures upon the petitioners for annexation, a showing of benefits to the annexed land can be considered on the question of need under the rule of reason. *Town of Lafayette v. City of Chippewa Falls*, 70 Wis. 2d 610, 235 N.W.2d 435.

An eligible elector and a qualified elector are identical. Ch. 6 applies to annexation referendum elector qualifications. *Washington v. Altoona*, 73 Wis. 2d 250, 243 N.W.2d 404.

Direct annexation not otherwise in conflict with the "rule of reason" was not invalidated because the petitioners were motivated by the desire to obtain a change in zoning of their land. *Town of Pleasant Prairie v. City of Kenosha*, 75 Wis. 2d 322, 249 N.W.2d 581.

When an action challenging annexation was filed before the limitation period ran, and the plaintiff town board had given no explicit authorization for commencement of an action, the subsequent attempt to ratify the commencement of the action was a nullity. *Town of Nasewaupee v. City of Sturgeon Bay*, 77 Wis. 2d 110, 251 N.W.2d 845.

The ballot language requirement is directory; substantial compliance is adequate. *Town of Nasewaupee v. Sturgeon Bay*, 146 Wis. 2d 492, 431 N.W.2d 699 (Ct. App. 1988).

Annexation fails in cases of a tie vote. *Town of Nasewaupee v. Sturgeon Bay*, 146 Wis. 2d 492, 431 N.W.2d 699 (Ct. App. 1988).

Under s. 893.73 (2) "adoption" refers to the legislative body's action of voting to approve an annexation ordinance and the statute of limitations begins to run as of that date. *Town of Sheboygan v. City of Sheboygan*, 150 Wis. 2d 210, 441 N.W.2d 752 (Ct. App. 1989).

An annexation ordinance must meet "rule of reason" requirements. Application of the rule is discussed. *Town of Menasha v. City of Menasha*, 170 Wis. 2d 181, 488 N.W.2d 129 (Ct. App. 1992).

"Against a city". The inspectors shall make a return to the clerk of the town.

(5) **CERTIFICATE OF INCORPORATION.** If a majority of the votes are cast in favor of a city the clerk shall certify the fact to the secretary of state, together with the result of the census, if any, and 4 copies of a description of the legal boundaries of the town and 4 copies of a plat of the town. The secretary of state shall then issue a certificate of incorporation, and record the certificate in a book kept for that purpose. Two copies of the description and plat shall be forwarded by the secretary of state to the department of transportation and one copy to the department of revenue.

(6) **CITY POWERS.** A city incorporated under this section is a body corporate and politic, with the powers and privileges of a municipal corporation at common law and conferred by ch. 62.

(7) **EXISTING ORDINANCES.** (a) Ordinances in force in the territory or any part of the territory, to the extent not inconsistent with ch. 62, continue in force until altered or repealed.

(b) A county shoreland zoning ordinance enacted under s. 59.692 that is in force in any part of the territory continues in force until altered under s. 59.692 (7) (ad).

(8) **INTERIM OFFICERS.** All officers of the town embracing the territory incorporated as a city continue in their powers and duties until the first meeting of the common council at which a quorum is present. Until a city clerk is chosen and qualified all oaths of office and other papers shall be filed with the town clerk, with whom the petition was filed, who shall deliver them with the petition to the city clerk when the city clerk is qualified.

(9) **FIRST CITY ELECTION.** Within 10 days after incorporation of the city, the town board and the town clerk who received the petition shall fix a time for the first city election, designate the polling place or places, and name 3 inspectors of election for each place. Ten days' previous notice of the election shall be given by the clerk by publication in the newspapers selected under sub. (3) and by posting notices in 3 public places in the city. Failure to give notice does not invalidate the election. The election shall be conducted as is prescribed by chs. 5 to 12, except that no registration of voters may be required. The inspectors shall make returns to the board which shall, within one week after the election, canvass the returns and declare the result. The clerk shall notify the officers-elect and issue certificates of election. If the first election is on the first Tuesday in April the officers elected and their appointees commence and hold their offices as for a regular term. Otherwise they commence within 10 days and hold until the regular city election and the qualification of their successors, and the term of their appointees expires as soon as successors qualify.

History: 1971 c. 304; 1977 c. 29 s. 1654 (8) (c); 1979 c. 89; 1981 c. 4 s. 19; 1981 c. 377; 1983 a. 532 s. 11; Stats. 1983 s. 66.012; 1991 a. 316; 1993 a. 329; 1995 a. 16 s. 2; 1995 a. 201; 1999 a. 150 s. 31; Stats. 1999 s. 66.0215.

"Adjacent" under sub. (1) means "contiguous", not "near". *City of Waukesha v. Salbashian*, 128 Wis. 2d 334, 382 N.W.2d 52 (1986).

66.0217 Annexation initiated by electors and property owners. (1) **DEFINITIONS.** In this section, unless the context clearly requires otherwise:

(a) "Assessed value" means the value for general tax purposes as shown on the tax roll for the year next preceding the filing of any petition for annexation.

(b) "Department" means the department of administration.

(c) "Legal description" means a complete description of land to be annexed without internal references to any other document, and shall be described in one of the following ways:

1. By metes and bounds commencing at a monument at the section or quarter section corner or at the end of a boundary line of a recorded private claim or federal reservation in which the annexed land is located and in one of the following ways:

- By government lot.
- By recorded private claim.
- By quarter section, section, township and range.

2. If the land is located in a recorded and filed subdivision or in an area subject to a certified survey map, by reference as described in s. 236.28 or s. 236.34 (3).

(d) "Owner" means the holder of record of an estate in possession in fee simple, or for life, in land or real property, or a vendee of record under a land contract for the sale of an estate in possession in fee simple or for life but does not include the vendor under a land contract. A tenant in common or joint tenant is an owner to the extent of his or her interest.

(e) "Petition" includes the original petition and any counterpart of the original petition.

(f) "Real property" means land and the improvements to the land.

(g) "Scale map" means a map that accurately reflects the legal description of the property to be annexed and the boundary of the annexing city or village, and that includes a graphic scale on the face of the map.

(2) **DIRECT ANNEXATION BY UNANIMOUS APPROVAL.** If a petition for direct annexation signed by all of the electors residing in the territory and the owners of all of the real property in the territory is filed with the city or village clerk, and with the town clerk of the town or towns in which the territory is located, together with a scale map and a legal description of the property to be annexed, an annexation ordinance for the annexation of the territory may be enacted by a two-thirds vote of the elected members of the governing body of the city or village without compliance with the notice requirements of sub. (4). In an annexation under this subsection, subject to sub. (6), the person filing the petition with the city or village clerk and the town clerk shall, within 5 days of the filing, mail a copy of the scale map and a legal description of the territory to be annexed to the department and the governing body shall review the advice of the department, if any, before enacting the annexation ordinance.

(3) **OTHER METHODS OF ANNEXATION.** Subject to s. 66.0307 (7), territory contiguous to a city or village may be annexed to the city or village in the following ways:

(a) *Direct annexation by one-half approval.* A petition for direct annexation may be filed with the city or village clerk if it has been signed by either of the following:

1. A number of qualified electors residing in the territory subject to the proposed annexation equal to at least the majority of votes cast for governor in the territory at the last gubernatorial election, and either of the following:

a. The owners of one-half of the land in area within the territory.

b. The owners of one-half of the real property in assessed value within the territory.

2. If no electors reside in the territory subject to the proposed annexation, by either of the following:

a. The owners of one-half of the land in area within the territory.

b. The owners of one-half of the real property in assessed value within the territory.

(b) *Annexation by referendum.* A petition for a referendum on the question of annexation may be filed with the city or village clerk signed by a number of qualified electors residing in the territory equal to at least 20% of the votes cast for governor in the territory at the last gubernatorial election, and the owners of at least 50% of the real property either in area or assessed value. The petition shall conform to the requirements of s. 8.40.

(4) **NOTICE OF PROPOSED ANNEXATION.** (a) An annexation under sub. (3) shall be initiated by publishing in the territory proposed for annexation a class 1 notice, under ch. 985, of intention to circulate an annexation petition. The notice shall contain:

1. A statement of intention to circulate an annexation petition.
2. A legal description of the territory proposed to be annexed and a copy of a scale map.