

WAPA SPRING CONFERENCE
JUNE 10, 2004
Jordan Lamb

I. Enacted Legislation of Interest¹

A. Alternative Method for Town Consolidation – 2003 WI Act 93

Current law authorizes a city, village, or town to consolidate with a contiguous city, village, or town. Consolidation requires adoption of an ordinance, by a 2/3 vote of all members of each governing body, establishing the terms of the consolidation and requires subsequent ratification of the consolidation by the electors in a referendum held in each municipality.

If a town is consolidating with a city or village, the consolidation must be submitted, prior to referendum, to circuit court and the Department of Administration (DOA) for a determination whether the consolidation ordinance meets statutory requirements and whether the proposed consolidation meets specified public interest criteria.

Representative Bonnie Ladwig (R-Racine) introduced Assembly Bill 130 (signed by into law by the Governor as Act 93), which made several changes and clarifications to the town consolidation procedure.

Consolidation of a Town With Another Town. Act 93 clarifies that contiguous towns may consolidate under the current consolidation statute (s. 66.0229, Stats.) without submitting the proposed consolidation to circuit court and DOA.

Consolidation of a Town With City or Village. Act 93 provides a new procedure (alternative to the current consolidation procedure in s. 66.0229), for the consolidation of all or part of a town contiguous to a city or village. The new consolidation procedure requires passage of an ordinance by a 2/3 vote of all of the members of the governing body of each consolidating municipality and ratification by the electors at a referendum held in each municipality. There is no requirement that the consolidation be submitted to circuit court or DOA.

As a condition of consolidating:

1. The town and the city or village must adopt identical resolutions describing the level of services residents of the proposed consolidated city or village will receive, or have access to, in at least the following areas: public park services; public health services; animal control services; library services; fire and emergency rescue services; and law enforcement services. In addition, at least some part of the consolidated city or village must receive sewage disposal services as a condition of consolidation.

2. The town and the city or village must adopt identical resolutions that relate to the ownership or leasing of government buildings.

3. The city or village with which the town is consolidating must enter into a separate boundary agreement, subject to approval of the town board for the town to be consolidated, with every city, village, and town that borders the proposed consolidated

¹ Note: Much of the legislative analysis provided in this handout was quotes from various Legislative Reference Bureau Act Memorandums and other materials.

city or village. The boundary agreement must determine the boundary between the parties to the agreement. The agreement must state its duration and include procedures under which the agreement may be amended.

4. The town and the city or village must agree to adopt a comprehensive plan (under s. 66.1001, Stats.) for the consolidated city or village, to take effect on the effective date of the consolidation.

Effective Date: Act 93 took effect on December 18, 2003.

B. Annexation of Town Territory by a City or Village – 2003 WI Act 317

Senator Alan Lasee (R-DePere) introduced Senate Bill 87, which made several changes to the allowable methods by which cities or villages may annex town territory.

2003 Wisconsin Act 317 prohibits a city or village from annexing any town territory unless the city or village agrees to pay the town, for five years, an amount equal to the amount of property taxes that the town imposed on that territory in the year in which the annexation is final. However, a city or village is not required to make payments to the town if the city or village, and the town, enter into one of the following types of boundary agreements:

- A boundary agreement (under s. 66.0307, Stats.), which permits the city or village, and the town, to determine boundary lines between themselves under a cooperative plan approved by the Department of Administration (DOA).
- A boundary agreement (under s. 66.0225, Stats.), which permits any two municipalities (cities, villages, and towns) whose boundaries are immediately adjacent at any point and who are parties to a court action testing the validity or invalidity of an annexation, incorporation, consolidation, or detachment to enter into a written stipulation determining a common boundary line.
- A boundary agreement (under s. 66.0301, Stats.), which generally allows a municipality to contract with other municipalities and with federally recognized Indian tribes and bands in this state for “the receipt or furnishing of services or the joint exercise of any power or duty required or authorized by law.”

The Act prohibits a city or village from annexing any territory if none of the city’s or village’s territory is in the same county as the territory to be annexed *unless* the town board and the county board in which the territory is located each adopt a resolution approving the annexation. If the annexation is of city-owned or village-owned territory, the city or village, and the town, must also enter into one of the types of boundary agreements listed above.

Effective Date: Act 317 took effect on May 7, 2004. The provisions of the Act first apply to any annexation that has not taken effect on the effective date of this subsection.

C. Changes to the Smart Growth Law – 2003 WI Act 233

Representative Sheryl Albers (R-Reedsburg) introduced Assembly Bill 608 (Act 233), which made several changes to the comprehensive planning law, known as the “Smart Growth” Law.

The comprehensive planning statute requires, beginning on January 1, 2010, that any decision, ordinance, or other action of a local governmental unit that affects land use must be consistent with that local governmental unit’s comprehensive plan. The statute [s. 66.1001, Stats.] sets forth in detail the required contents of a comprehensive plan. The statute also contains a list of actions of a local governmental unit that must be consistent with the local governmental unit’s comprehensive plan.

2003 Wisconsin Act 233 clarifies two provisions of the comprehensive planning statute that have raised questions:

First, the Act clarifies the definition of local governmental unit. In the prior statute, this term included regional planning commissions. The prior statute seemed to authorize regional planning commissions to adopt land use ordinances, although a careful analysis of the prior statute did not support this interpretation. The Act creates a new definition of “political subdivision,” which includes only cities, villages, towns, and counties. The definition of “local governmental unit” is retained, to include both political subdivisions and regional planning commissions. The Act then separates the use of these terms to make it clear that regional planning commissions do not have the authority to adopt land use ordinances. This clarification is emphasized in the Act by an express statement that the comprehensive plan developed by a regional planning commission is advisory only in its applicability to a political subdivision and a political subdivision’s comprehensive plan.

Second, Act 233 requires consistency. The prior statute required that any “program or action” of a political subdivision or a regional planning commission affecting land use must be consistent with its comprehensive plan, commencing January 1, 2010. This statement was followed by a list of examples of what are deemed to be programs or actions in the statute. The Act clarifies the statute by deleting “program” and retaining only “action.” Further, the Act deletes most of the list of examples, eliminating those decisions or programs that are unrelated or marginally related to land use such as impact fees and boundary changes, and retaining only those examples that are the core land use decisions: official mapping, local subdivision regulation, zoning by a political subdivision, and zoning of shorelands and wetlands.

Effective Date: Act 233 became effective on April 28, 2004.

D. Changes to the TIF (Tax Incremental Financing) Program – 2003 WI Act 126 and 2003 WI Act 127

Senator Cathy Stepp (R-Sturtevant) and Representative Michael Lehman (R-Hartford) worked together this session to introduce and pass two pieces of legislation to make changes to Wisconsin's TIF (Tax Incremental Financing) laws.

Act 126 makes a number of technical and policy changes to the TIF laws based, in part, upon the recommendations of the Governor's December 2000 working group on TIF. Among other changes, Act 126 provides:

- The Act provides that a city or village may create a tax incremental district ("TID"), or amend an existing TID to add territory to it, if the equalized value of the proposed TID plus the value increment of all existing TIDs in the city or village does not exceed 12% of the total equalized value of the city or village.
- The Act allows a city or village to create a standing joint review board to review all proposed TIDs instead of creating a separate joint review board for each proposed TID.
- The Act modifies the maximum life span of TIDs created on or after October 1, 2004. The maximum life span of a TID created for industrial development or mixed-use development is 20 years after the TID is created, with a possible five-year expansion of the TID life span. The maximum life of the TID created to address problems of the blighted area or an area in need of rehabilitation is 27 years after the TID is created.
- The Act authorizes a city or village to adopt up to four territorial amendments to a TID at any time during the life span of the TID.

Act 127 requires the Department of Revenue (DOR) to perform certain new administrative duties with respect to tax incremental districts (TIDs) and authorizes DOR to impose a fee on TIDs to help pay for the costs of the implementing of Wisconsin Acts 127 and 126.

The Act requires DOR to create and update a manual on tax incremental financing. The manual is required to contain the rules relating to the program, common problems encountered by cities and villages under the program, and possible side effects of the use of tax incremental financing. The manual is intended to be an educational tool for local government officials, citizens, and joint review board members.

In addition, the Act requires DOR to assist joint review boards in reviewing particular proposals for TIDs.

Effective Date of Act 126: October 1, 2004.

Effective Date of Act 127: Act 127 took effect on March 6, 2004.

E. Nonmetallic Mining Changes to Comprehensive Planning Law – 2003 WI Act 307

Representative John Gard (R-Peshtigo) and Senator Mary Panzer (R-West Bend), worked together this session to amend Wisconsin's comprehensive planning law with regard to nonmetallic mining. Act 307 does the following:

1. Distribution of Proposed Comprehensive Plan Changes Affecting Use of Property

Before a comprehensive plan may take effect, current law requires a local governmental unit to adopt written procedures designed to foster public participation in the preparation of the plan. Act 307 requires these written procedures to describe the methods the local governmental unit will use to distribute proposed, alternative, or amended elements of a comprehensive plan to: (a) owners of property in which the allowable use or intensity of use of the property is changed by the comprehensive plan; and (b) persons who have a leasehold interest in property allowing extraction of nonmetallic mineral resources if the allowable use or intensity of use of the property is changed by the comprehensive plan.

2. Notice of Public Hearing to Persons With Certain Interests in Nonmetallic Minerals

Current law requires a local governmental unit to hold a public hearing on a proposed comprehensive plan or amendment to a plan. Under the Act, at least 30 days before the required public hearing is held, a local governmental unit must provide written notice of the hearing to: an operator who has applied for or obtained a nonmetallic reclamation permit; a person who has registered a marketable nonmetallic mineral deposit; and any other property owner or leaseholder who has an interest in property allowing extraction of nonmetallic mineral resources if the property owner or leaseholder requests in writing that the local governmental unit provide the property owner or leaseholder notice of the public hearing.

3. Clarification of Application of Certain Zoning Limitations

The Act expressly provides that the agricultural, natural resources, and cultural resources element of a comprehensive plan must recognize limitations under current law on a jurisdiction's ability to place zoning limitations on property that has been registered as a marketable nonmetallic mineral deposit.

Effective Date: Act 307 took effect May 7, 2004.

II. Key Vetoes

A. **Assembly Bill 551** – Introduced by Representative Donald Friske R-Merrill

Assembly Bill 551 would have prohibited a county development plan, or an amendment to a county development plan, from taking effect in a town unless that town's board approves the count board's action. In his veto message, the Governor stated that he vetoed this legislation because it alters the relationship between counties and towns, and undermines the ability of counties to make appropriate plans for providing required county services.

B. **Senate Bill 351** – Introduced by Senator Ted Kanavas R-Brookfield

Senate Bill 351 would have permitted the board of supervisors of any county with a population of less than 500,000 to decrease the number of supervisors on the board and adopt a new redistricting plan during the ten-year period between the adoption of decennial redistricting plans. Governor Doyle stated that he vetoed this legislation because it did not provide a limit on the number of times the county board itself could adopt a redistricting plan that reduces the number of supervisors, or the number of time a referendum question to downsize could appear on a ballot. The Governor felt that "the open-ended nature of these provisions may create circumstances where the cost, time and effort spent on redistricting far outweigh any savings of benefits obtained." He did state, however, that a more tailored bill could be developed which would accomplish the goals behind this piece of legislation.