



## **Proposal to Seek Legislation to Allow the Creation of a Special Taxing District for Consolidation**

This proposal is for services related to Item No. 1 in our letter dated April 13, 2009 related to assisting the City and Village in seeking legislation to allow the creation of a special taxing district for consolidation. It is proposed that the Boardman Law Firm would provide the legal services, including legal research, legal opinions, and drafting of the proposed legislation, and would also provide lobbying services. Ruekert & Mielke would assist with drafting the legislation and also with lobbying.

The easiest way to better share the benefits of consolidation among City and Village tax payers would be for a consolidated Pewaukee to impose one property tax rate in the former City area and another higher property tax rate in the former Village area. Unfortunately, however, this option is not allowed under Wisconsin law. The uniformity clause of the Wisconsin Constitution prohibits a community from establishing different property tax rates in different parts of the community. This means that Wisconsin law would not allow two communities to consolidate and set different property tax rates in different parts of the combined community. Thus, a consolidated Pewaukee would not be able to maintain separate property tax rates for the property originally in the Village and the property originally in the City.

Recognizing the limitations posed by the uniformity clause of the Wisconsin Constitution, area legislators sought to amend the constitution to allow a consolidated municipality to apply different tax rates to the former City and Village areas, with a gradual merging of the tax rates into a uniform rate over a period of years. A constitutional amendment to this effect was proposed in the legislature, but died when the measure failed to pass in two consecutive legislative sessions.

Given the inability to directly impose different property tax rates on different parts of the consolidated Pewaukee, Ruekert & Mielke and the Boardman Law Firm looked at other methods that could legally be used to raise increased funds from only those property owners located within the current Village area. During this review, it was noted that the legislature may authorize the creation of separate authorities or districts with separate taxing authority, and that if the legislature does authorize the creation of a separate district, that district would be able to collect revenue, including property tax revenue, from the area within the district. Creating a separate district would not violate the uniformity clause because the special district would be imposing the additional tax, not the municipality.

With these legal principles as guidance, Ruekert & Mielke and the Boardman Law Firm put forth the concept of seeking legislation to create a new special purpose district that could be established in conjunction with municipal consolidations. The purpose of the district would be to impose a tax within the community that would otherwise receive the greater benefit from consolidation. In this case, the district would be created to include all of the property within the pre-consolidation Village limits. The district could be used to fund an annual transfer to the



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general fund that would be used to reduce the community-wide tax rate, or a lump sum payment that would be used to establish a tax rate reduction fund.

Ruekert & Mielke and the Boardman Law Firm see many advantages with this concept. This approach offers a simple and straightforward link between the function of the special district and the purpose for which it is created. Property owners in the Village would benefit more financially from consolidation without the creation of such a district -- therefore a district is created to impose a tax on these properties in order to more equally distribute the benefits of the consolidation. This type of district could be allowed considerable flexibility in determining the amount of such payments and how they would be structured because it is not tied to the provision of specific infrastructure or services.

The major disadvantage, however, is that this option requires the Legislature to adopt new legislation allowing the creation of these special districts. This legislation would be precedent setting as we are aware of no comparable legislation in Wisconsin or in other states. In addition, in promoting this legislation we would need to address how this proposal is different from the constitutional amendment proposed previously, and why we believe this legislation is constitutional under the uniformity clause. It will be critical to fully address these questions at the beginning of the legislative process. In particular, it will be important to work with the bill sponsors, Legislative Council staff, and Legislative Reference Bureau staff to ensure their questions are answered and that they do not have doubts about the constitutionality of the bill.

In order to seek legislation to allow the creation of a special taxing district for consolidation, we would undertake the following tasks:

- Task 1: Review Wisconsin Statutes to identify (a) how the proposed legislation will fit with existing consolidation statutes; and (b) whether there are statutes with similar construction that could be used as a starting point for structuring the proposed legislation. At this point, we have not found statutes with substantially similar construction to what we expect to include in the proposed legislation. While this may simplify Task 1, this makes Task 3 more difficult.
- Task 2: Research and review similar statutes, if any, in other states. At this point, however, we are unaware of any similar statutes in other states. While this may simplify Task 2, this makes Task 3 more difficult.
- Task 3: Draft proposed legislation. It is anticipated that no similar statutes will be found, and that the proposed legislation will need to be drafted from scratch. The concept for the legislation is that the Legislature would authorize a process for the creation of a special purpose district that would be allowed to impose a property tax within the district to pay an agreed upon consolidation payment to the consolidated municipality. The amount of the consolidation payment would be



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established by the two municipalities involved in the consolidation. The consolidation payment would be made in recognition of the benefits to be obtained by the district from the consolidation. If this concept is followed, the legislation will need to address issues such as (a) how the special purpose district is created and how long it will last, (b) whether a referendum is required to create the district, (c) what are the powers of the district, (d) limitations on the district's functions (so there are no additional administrative burdens), (e) how the terms of the consolidation payment are established, (f) what is to be included in the agreement between the two communities, and (g) how the agreement between the two communities is approved. As this legislation is developed, it will be important for the City and Village to consider how they would expect to approach and resolve these issues so that the proposed legislation is consistent with how they would wish to proceed.

- Task 4: Fully research and prepare a detailed memorandum supporting the legality of the proposed legislation. This detailed memorandum will be critical to answering questions about the constitutionality of the proposal legislation. This memorandum will be used be used with bill sponsors, Legislative Council staff, and Legislative Reference Bureau staff to obtain their concurrence that the proposed legislation is constitutional. It will be critical to obtain this concurrence upfront so that questions about the bill are not raised during the legislative process.
- Task 5: Contact municipal organizations and other entities interested in commenting on and supporting the draft legislation. During these contacts, the proposed legislation will be explained in detail and any questions will be answered.
- Task 6: Develop a legislative strategy. Identify and meet with potential lead sponsors for the legislation. Explain the proposed legislation, answer any questions, and obtain comments on the proposed legislation. As a result of comments received, the proposed legislation may be revised. William Mielke and Lawrie Kobza will register as lobbyists for this effort.
- Task 7: Work with the potential lead sponsor to seek input and address any concerns with the proposed legislation from the Legislative Council and the Legislative Reference Bureau. The memo prepared under Task 4 will be critical in dealing with the Legislative Council and the Legislative Reference Bureau. Make needed revisions to the proposed legislation to address the concerns.
- Task 8: Assist the lead sponsor in seeking co-sponsors for the legislation, if necessary.



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- Task 9: Provide information to legislators about the proposed legislation. Answer questions and address concerns as needed.
- Task 10: Assist in contacting other legislators, organizations and municipalities interested in promoting the legislation. Work with the League of Wisconsin Municipalities and the Alliance of Cities.
- Task 11: Assist in evaluating, commenting on, and potentially preparing proposed amendments to the draft legislation.
- Task 12: Attend and testify at legislative hearings on the proposed legislature. The scope of work does not include the retention of a lobbyist, other than William Mielke and Lawrie Kobza, at this time. If such additional services are needed in the future, a request to retain a contract lobbyist, along with a cost estimate, will be provided at that time.

Cost

Our estimated costs to complete all of the items included in this proposal are as follows:

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| Ruekert & Mielke  |          |
| Assist with drafting and promoting legislation                                      | \$20,000 |
| Boardman Law Firm   |          |
| Legal research and opinion, drafting legislation, assist with promoting legislation | \$28,000 |
| Total   | \$48,000 |