



Fourth Floor  
1 South Pinckney Street  
P.O. Box 927  
Madison, WI 53701-0927

Phone • (608) 257-9521  
Fax • (608) 283-1709

**Lawrie J. Kobza**  
Direct Dial Number • (608) 283-1788  
lkobza@boardmanlawfirm.com

## MEMORANDUM

TO: PEWAUKEE MERGER COMMITTEE

FROM: BOARDMAN LAW FIRM  
Lawrie J. Kobza

RUEKERT & MIELKE  
Christy Cramer

DATE: February 1, 2010

RE: QUESTIONS ABOUT PROPERTY ASSESSMENTS AND MUNICIPAL COURTS

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### QUESTION ON PROPERTY ASSESSMENTS:

How would the property tax assessment process work in the event of consolidation?

### ANSWER:

This issue was discussed with Carol Doran of the Department of Revenue, Bureau of Property Tax (tel. no. 608-266-2569).

According to Ms. Doran, the tax roll is established on January 1 of a year. One exception to this rule is set forth in Wis. Stat. § 66.0235(13) which provides that if a city is incorporated after January 1, but before April 1, a new tax roll will be established for the incorporated city. What this means for the City of Pewaukee and Village of Pewaukee is that if the consolidation occurs after April 1, 2010, no new tax roll for the new City would be created for 2010. Instead, the tax roll of the prior City and Village would continue to exist separately for the remainder of 2010.

From talking with Ms. Doran, it is our understanding that the City Assessor would complete and certify the former City's tax rolls, and the Village Assessor would complete and certify the former Village's tax rolls. The City Assessor would not be responsible for certifying the accuracy of the Village's tax assessments, and the Village Assessor would not be responsible for certifying the accuracy of the City's tax assessments.

Since the assessment process is to remain separate for 2010, it would make sense for the City and Village Boards of Review to remain separate through 2010. The City Board of Review would handle the tax assessments for the former City properties, and the Village Board of Review would handle the tax assessments for the former Village properties. The draft ordinance will be revised to accomplish this.

Although the property assessments remain separate for 2010, only the new City will be levying property taxes at the end of 2010. This raises the question of how property taxes are to be levied when the new community includes two different areas with different assessments.

Ms. Doran indicated that this issue was recently addressed when the Village of Rochester and the Town of Rochester consolidated. We spoke with Betty Novy, who is the Clerk/Treasurer for the Village of Rochester, about the process they followed in levying property taxes. She told us the following.

The Town and Village of Rochester consolidated in 2008. The referendum took place in November 2008 and the two municipalities merged for the 2009 budget year. The Town and the Village had previously worked to prepare individual tax rolls and budgets prior to the referendum. Once the referendum passed, the two separate budgets were merged into a single 2009 budget and levy for the new Village. Because the consolidation occurred in November, there were two separate tax rolls for the new Village with different assessment ratios. The total levy for the new Village, therefore, was apportioned between the Town tax roll and the Village tax roll as follows. First, the assessed value of each tax roll was converted to an equalized value. Second, the tax levy was divided between the two rolls in proportion to the amount of equalized value on each roll. Third, the amount of the levy apportioned to each tax roll was then divided by the assessed value for that roll to determine the mil rate for the tax roll. The end result was that there were different mil rates for the Town tax roll versus the Village tax roll in that first year because the two areas were assessed differently and therefore had different assessment ratios.

Ms. Novy also worked with the Department of Revenue to ensure that levy limits were not exceeded. The Department of Revenue agreed to look at the total levy limit of the Village plus the Town and compare that to the total amount of taxes to be levied in both the Town and the Village, rather than looking at each former municipality's levy limit on an individual basis.

We believe the process followed by the consolidated Village of Rochester made sense and produced a fair result. We recommend that this process be followed for the first year if the City and Village of Pewaukee consolidate.

If further details on this process are desired at this time, we suggest that a meeting be held with the City assessor, the Village assessor, and Ms. Doran from the Wisconsin Department of Revenue.

#### QUESTION ON MUNICIPAL COURT:

The City of Pewaukee and the Village of Pewaukee each have a municipal court. May these courts continue after consolidation?

#### ANSWER:

The draft consolidation ordinance is currently based upon the premise that the municipal courts would automatically dissolve upon consolidation. The rationale for this premise is discussed below. However, given the questions raised, we suggest that a meeting or conference call be held with the municipal judges for the City and Village of Pewaukee and representative from the

Director of State Courts to discuss what options exist for the continuation of the municipal courts.

A municipal consolidation creates a new municipal entity and dissolves the prior entities. Municipal consolidation was described in City of Milwaukee v. Sewerage Commission of City of Milwaukee, 268 Wis. 342, 67 N.W.2d 624 (1954), as a process that "merges two or more political units. It involves surrender of all power of one unit to the other, or to a new consolidated government, on the basis of terms agreeable to both. As a result of consolidation the government of one unit is *disbanded*, its assets and liabilities are taken over by the other, and citizens of the disbanded unit are thereafter eligible for all of the rights and duties of the remaining consolidated government."

Based upon this premise, the consolidation ordinance was drafted to recognize that the prior entities would dissolve upon the effective date of the consolidation. This would apply to the existing City and Village, which would no longer exist after consolidation. The positions of the elected officials of the City and Village would cease after consolidation because the governmental bodies no longer exist. Similarly, the draft ordinance assumes the existing municipal courts of the City of Pewaukee and the Village of Pewaukee would also automatically dissolve because the governmental bodies no longer exist. The position of the elected judges for those courts would also then cease.

Although the former City and Village would ultimately dissolve upon consolidation, prior to that the consolidating municipalities are to negotiate a consolidation ordinance to set out how the consolidation would actually be effectuated. Wis. Stat. § 66.0229(1). In the draft consolidation ordinance here, for example, the City and Village agree to retain existing staff, departments, utilities, board, and commissions until the new City Council elects to make changes. The City and Village also agree to keep the ordinances and resolutions of each community in existence and applicable to residents within the applicable area until the new City Council develops new ordinances and resolutions for the consolidated city.

One question would seem to be whether retention or reestablishment of a municipal court may be included in a consolidation ordinance. It was our initial conclusion, upon talking with staff from the Director of State Courts, that the communities would not be able to reestablish a municipal court pursuant to a consolidation ordinance. The process for establishing a municipal court is explicitly set forth in Wis. Stat. § 755.01, and it was felt that this more specific process would have to be followed in establishing the municipal court.

However, even if a municipal court could be reestablished by the consolidation ordinance, provision would still have to be made for the election of a judge. Section 755.01(1), Wis. Stats., provides that a permanent vacancy in the office of municipal judge shall be filled under §8.50(4)(fm), Wis. Stats., that provides:

"[a] permanent vacancy in the office of [a] municipal judge may be filled by temporary appointment of the municipal governing body. . . . The office shall then be permanently filled by special election, which shall be held concurrently with the next spring election following the occurrence of the vacancy, except that a vacancy occurring during the period after December 1 and on or before the date of the spring election shall be filled at the 2nd succeeding spring election. . . ."

This is the election timeline for municipal judge included in the draft ordinance.

It would appear that the only way the current municipal judges could continue with their positions without standing for election in a special election is if the current municipal courts for the current City and Village are allowed to continue in existence. As mentioned above, the draft consolidation ordinance is based upon the premise that the municipal courts would not be able to continue in their current form because the current City and Village would both be dissolving. However, given the questions raised, a meeting or conference call including the municipal judges for the City and Village of Pewaukee and a representative from the Director of State Courts to discuss the options for the municipal courts is recommended.