DATE: June 30, 2010

TO: Members of the Board of Trustees, Village of Pewaukee
Members of the Common Council, City of Pewaukee
Honorable Village President Jeff Knutson
Honorable Mayor Scott Klein

FROM: The Pewaukee Merger Advisory Committee, Philip Evenson, Chair

RE: Village of Pewaukee Village Board listing of concerns it would like the Merger Advisory Committee to address with regard to the SUD ordinance and the Consolidation ordinance with a report back to the Village Board and Common Council

The members of the Pewaukee Merger Advisory Committee hereby respectfully submit the following responses to the list of concerns raised by the Village Board with regard to the SUD Ordinance and the Consolidation Ordinance.

The Committee has been guided in its work by the 2006 Memorandum of Understanding between the Village of Pewaukee and the City of Pewaukee. The MOU recognized that prior efforts to bring the consolidation question to a referendum failed in large part because consolidation would financially benefit Village property owners more than City property owners unless a means were found to more fairly share the savings from consolidation. In order to fulfill the charge of the MOU, the Committee has undertaken a considerable amount of analysis to determine: 1) the savings to taxpayers and utility ratepayers from consolidating the two communities; and 2) if consolidation could be accomplished in a way that would fairly and equitably share the savings between taxpayers and utility ratepayers of both communities. The Committee has concluded that the two communities can merge and the benefits of such a merger would be realized by all taxpayers, although the level and amount of benefits will differ. The plan recommended by the Committee relies on the formation of a Street Utility District (SUD) and the use of $5.5 million of Village utility reserves as the essential means of more fairly distributing the benefits of consolidation between City and Village taxpayers and ratepayers. Without these components, the savings from consolidation would not be equitably shared between City and Village taxpayers and ratepayers.

The 2006 MOU also acknowledged that each municipality would need to proceed expeditiously with capital projects which it considers to be in the immediate best interests of its residents. The City of Pewaukee has, to date, delayed construction of two major projects that will be needed in the near future if the two municipalities remain separate, but which likely would <u>not</u> be needed if consolidation occurred—that being replacement of the elevated storage tank at City Hall and construction of an east-west water transmission main. If the consolidation issue is not resolved in a timely manner the City may need to proceed with these projects, which would result in significant lost opportunities for capital cost savings.

Response to concerns regarding the Street Utility District (SUD)

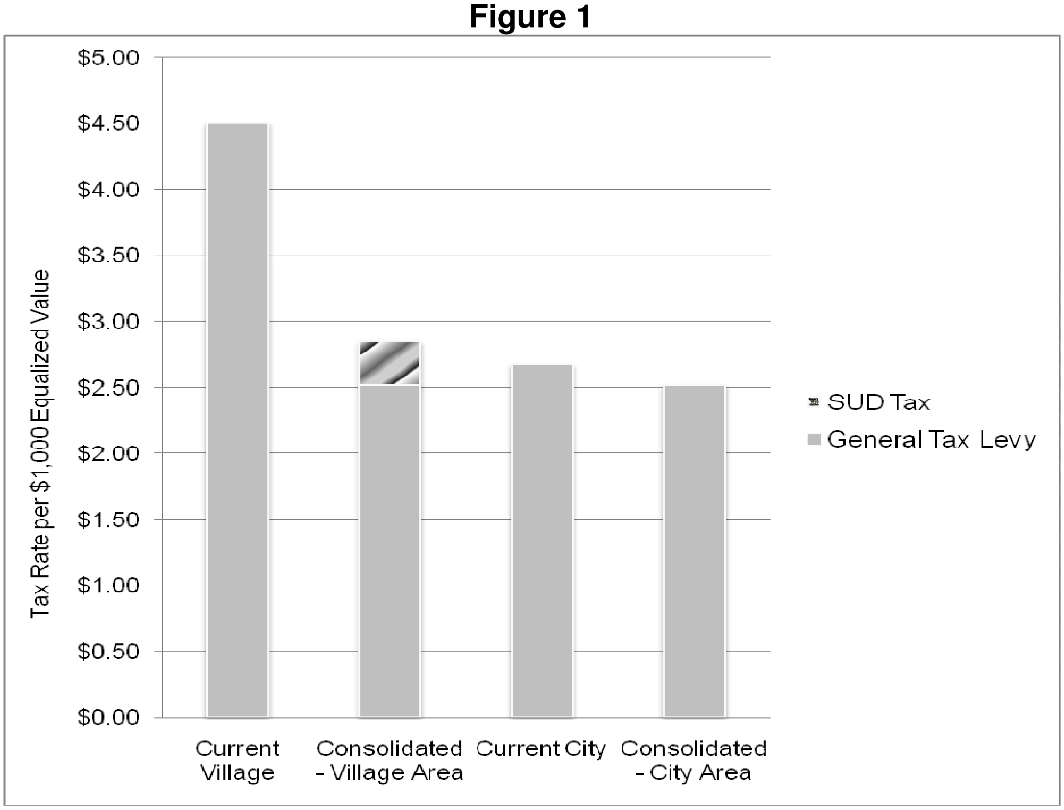
1. *One community – one rate*

   Committee's Response

   The one community, one tax rate option is not feasible. A single tax rate for the new community would be higher than the City's current tax rate and much lower than the Village's current tax rate. This would be an inequitable distribution of the benefits of consolidation. This would not be a politically feasible option and likely would not gain the support of City voters in a consolidation referendum. The proposal that is currently under consideration provides a significant tax rate reduction for the Village, much more than the reduction for City property owners.

   Figure 1 shows the 2010 City and Village tax rates and the projected year 1 tax rates for the consolidated city (based on 2010 costs) under the proposed plan. As shown, the Village's current tax rate is $4.51 per $1,000 of equalized value (fair market value). The proposed plan would include a general city-wide tax rate of $2.52 plus the SUD tax of $0.33 for a total tax rate of $2.85 within the area of the current Village. This would be a tax rate decrease of $1.66 for Village properties. Properties within the current City area would pay only the city-wide tax of $2.52, or a $0.16 decrease from the City's current tax rate.

Figure 1



Background

The focus of the recent study efforts has been to find a way to have different tax rates in the consolidated city for some period of time after consolidation.

In 2002, the fact that consolidation would have resulted in a tax increase for City residents, while at the same time decreasing taxes for Village residents, prevented the issue from reaching a referendum.

In 2006, the City and the Village signed a Memorandum of Understanding that re-opened merger discussions. The MOU established several general guiding principles for these discussions, of which the following is most relevant to a discussion of the proposed SUD:

New legislation by the State Legislature will most likely be needed to provide a tax-equalization-adjustment-period between the two communities unless it can be clearly established during the study process that tax levies plus special assessments create an approximately equal burden for taxpayers in both communities.

In the spring of 2008, the "Interim Report to the City and Village of Pewaukee on the Update of the Consolidation Study" made findings similar to those of the 2002 study: (i) an overall costs savings would result from consolidation; and (ii) consolidation would financially benefit Village property owners more than City property owners unless a means were found to achieve a lower effective tax rate for former City area property owners within a consolidated municipality.

The 2008 report recommended forming a Merger Advisory Committee and conducting a more formal study on how to accomplish a merger by "effectively blending the finances of the two communities together over a relatively long period of time." The goal of the study would be to recommend ways to keep the property tax rate for City property owners equal to or less than the current tax rate, and to identify one or more options for recovering revenues exclusively from properties within the current Village area.

In late 2008, the Merger Advisory Committee was formed, and the consultant team of Ruekert/Mielke and the Boardman Law Firm was retained to undertake the recommended feasibility study. It was uncertain at the outset of the study whether any feasible option would be found. The easiest way to better share the benefits of consolidation between City and Village taxpayers 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. However, the uniformity clause of the Wisconsin Constitution prohibits a community from establishing different property tax rates in different parts of the 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.

The purpose of the feasibility study conducted in 2009 was to find other ways to impose a higher tax on the area of the current Village, to charge additional fees within that area, or to identify existing Village resources that could be used to offset the taxes of the combined municipality.

2. *Those within the SUD should have representation on it (or over it)*

   <u>Committee's Response</u>

   There is not an option under Wisconsin State law for the Street Utility District to be governed by a body other than the City Council or a committee appointed by the City Council. To the extent that the City Council includes members who live within the SUD area, those within the SUD will be represented on decisions concerning the SUD.

   <u>Background</u>

   Wisconsin Statutes §66.0827 governs the creation of Utility Districts. It states that the common council may direct that the costs of utility district highways, sewers, sidewalks, street lighting and water for fire protection be paid out of the utility district fund. It does not contain any provision for voters within the district to elect a utility district commission as is allowed for a town sanitary district.

3. *Concern that it will not end in 10 years*

   <u>Committee's Response</u>

   The Committee believes that the provisions contained within the SUD ordinance and the consolidation ordinance will be sufficient to require the district to automatically dissolve after ten years. To the extent that different levels of service continue to be maintained, there could be a justification to re-create the district after it is dissolved. However, that would require the city council to go through the process that was used to create the district initially, which would require notification of property owners, a public hearing and a ¾ vote of the council. The automatic termination of the district is a certainty. The re-creation of a district after ten years, while possible, is by no means certain.

   <u>Background</u>

   Both the ordinance establishing the SUD and the consolidation ordinance dissolve the district 10 years from its creation date.

   Section 1 of the Street Utility District Ordinance states:

   "The street utility district shall automatically dissolve ten years after the effective date of this Ordinance"

   Section 10.D. of the Consolidation Ordinance states:

"Pursuant to the ordinance adopted by the Village of Pewaukee under Wis. Stat. sec. 66.0827, the street utility established by the Village of Pewaukee automatically terminates ten years after its creation."

These statements will dissolve the SUD 10 years after its creation.

In order to re-create the district, the city council would have to follow the same procedures that were required to create the district. The proposed boundaries would have to be determined. A notice letter would have to be mailed to every property owner in the proposed district. The council would have to hold a public hearing and would need a ¾ vote to establish the district.

4. *It will prolong the "us" versus "them" mentality of a merged community as the old Village will continue a separate identity as the SUD area*

<u>Committee's Response</u>

There are many examples of municipalities that encompass different districts for different services. Lake management districts are a common occurrence throughout Wisconsin. Many municipalities have areas within two or more different school districts. Business improvement districts are commonly used to fund special amenities and promotion of a business district through additional taxes levied on property owners within the district. Subdivision associations may have fees for maintenance of amenities within the subdivision. Tax incremental finance districts provide special benefits to properties within the district. Cities where water service is not provided to the entire community may tax properties within a certain distance of a fire hydrant for water for public fire protection. These differences do not have to create an "us versus them" mentality. They are simply a means of fairly charging for specific benefits or services received.

The proposed SUD is a fair and reasonable means of charging for a different level of service that is provided within the Village area.

<u>Background</u>

There are differences in the physical infrastructure and services provided within the current City and Village areas that will most likely continue on after consolidation.

- Streetlights in the Village are publicly operated, whereas nearly all streetlights in the City are the responsibility of private property owners.
- Most Village streets have sidewalks, whereas most City streets do not.
- A higher percentage of Village streets have curb and gutter.

- A high percentage of roads in the Village (95 percent) are under Village jurisdiction. In the City, only 79 percent of the road miles are under City jurisdiction and the higher traffic roads are primarily county roads.

- The majority of Village streets have a paved surface more than 30 feet wide, whereas in the City, most of the City-maintained streets have less than 26 feet of pavement.

- The City levies special assessments for a higher percentage of its road reconstruction costs as compared to the Village.

It would be infeasible, or at least difficult, to do away with many of these differences.

- The street widths are fixed and must continue to be maintained.

- It would not be impossible to remove the sidewalks, but it would be very costly and would reduce safety and accessibility for Village residents.

- It would be extremely difficult to transfer ownership and maintenance responsibility for street lights to individual property owners or associations.

- A change in the special assessment policy would mean that individual Village property owners would have a higher cost and a lien on their property when their local street was reconstructed.

As an alternative to the nearly impossible approach of removing these differences, the SUD would allow a mechanism for fairly charging property owners for the additional costs associated with these differences and the benefits attendant thereto.

5. *Is there any other option other than creating an SUD or a legislative fix that has not gained support in the legislature or is this the best option out there?*

Committee's Response

The Committee has done exhaustive research into the range of potential options and has pursued all of the options that were identified as potentially feasible.

The SUD is the only option available under present law that would recognize the differential levels of public works services presently provided to Village of Pewaukee residents but not to City of Pewaukee residents – while at the same time providing a basis for differential property tax rates under the merged community scenario as is the case between current City and current Village property owners.

The only other options that were identified as feasible and have been pursued, the State Constitutional amendment approach and the statute to allow for a consolidation tax district, would result in significantly greater differential property tax rates during the first ten years of a merged community. Despite the Committee's efforts, neither of these latter alternatives is presently available for the purpose of effecting a merger. From the Committee's perspective, the SUD proposal now on the table, with its tax rate reduction of about $1.66 per $1,000 of property value in the present Village area, should be viewed by Pewaukee Village officials and residents as a far superior proposal to either of the multi-year "blending" tax rate alternatives that remain at this date legally unavailable.

Background

In 2002, neither the Committee nor the consultants were asked to develop options for legislative or other means to achieve a better distribution of the savings of consolidation. The first effort to create such an option was a constitutional amendment that was proposed in 2006. The amendment passed the Assembly but was not voted on by the Senate. The amendment was again proposed in 2007 and again passed the Assembly but the Senate did not vote on the measure. It was proposed again in 2009 but did not make it to a vote in either the Senate or the Assembly.

The study that was undertaken in 2009 was the first effort to identify other options besides the constitutional amendment. The "Consolidation Tax Rate Feasibility Analysis" completed in March 2009 considered a wide range of options as described below. These options generally fell under three general approaches:

- The ability to collect funds through means other than through property taxes that may not be covered by the uniformity rule.
- The creation of separate authorities or districts with separate taxing authority.
- The use of any existing resources of the Village that could be used to offset the tax levy of the consolidated city for a period of time.

The following options were considered. The details of Wisconsin State law governing each of these options and the feasibility of each option are contained in the March 2009 report.

- Special Assessments
- Fees or Charges
- Special Taxing Districts - Utility Districts
- Possible Legislation to Create a Consolidation Tax District
- Use of Utility Reserves

From the list of potential methods described above, the 2009 Consolidation Tax Rate Feasibility Analysis identified three potentially feasible options:

- Seek legislation to allow the creation of a special taxing district in the Village as part of the consolidation process.
- Use of Village utility reserves to offset the tax levy
- Creation of a utility district to fund certain street-related expenses within the current Village area

The study identified the first option as the best and most straight-forward means of redistributing the financial benefits of consolidation. If the proposed legislation were not successful, the study recommended using a combination of the second and third options. Since April 2009, the Merger Advisory Committee and the consultant team have been pursuing and refining these two parallel approaches. The legislative effort has not been successful to date. Each of these options, as currently defined, is described below.

Legislation for a Special Tax / Assessment District

- Legislation to authorize the creation of 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 Village.
- The district would be created to include all of the property within the pre-consolidation Village limits.
- The district would be used to fund an annual transfer to the general fund that would be used to reduce the community-wide tax rate.
- The amount of the transfer from the special district would decrease each year, gradually decreasing the total tax rate for property owners in the Village area. Over a period of 10-15 years, the transfer would be phased out. In order to provide both the City and the Village with a proportionate tax rate decrease, the initial amount per year would be approximately $1.8 million.
- The amount of the annual payments would be determined in the consolidation ordinance.
- The City and Village, through the consolidation ordinance, would have considerable flexibility in determining the amount of such payments and how they would be structured because the payments are not tied to the provision of specific

infrastructure or services. It would not require the City or Village to justify the amount of costs being allocated to the district on the basis of specific services provided.

Use of Village Utility Reserves

- Draw unrestricted cash reserves from the Village water and sewer utilities to create a debt service fund. This fund would be held by the General Fund of the consolidated city in an interest-bearing account.

- This fund would be used to make debt service payments on debt existing prior to consolidation, thereby reducing the amount of debt service that must be funded through the property tax levy. This would help to reduce the tax rate of the consolidated city.

- The proposal calls for the use of approximately $5.5 million of Village utility reserves. This amount was determined based on a comparison of the amounts held by the City utilities versus the Village utilities to meet operating and debt service reserves. This amount represents the amount of Village utility reserves that are over and above both the amount needed for typical operating and debt service reserves, and the amount carried by the City utilities.

- Amounts would be drawn from the tax rate reduction fund as needed each year for the first several years after consolidation, to keep the general property tax rate at the desired level. The consolidation ordinance does not specify the annual withdrawals, but the plan recommends that the withdrawals start at a relatively high amount and be reduced over time.

Street Utility District

- The consolidated city would fund a base level of street maintenance through the general property tax levy and create a street utility district for the Village area to fund the additional services provided in that area.

- The utility district expenses would be funded through a utility district property tax levy within the former Village area.

- The city council of the consolidated City would oversee the utility district budget.

- Utility districts cannot be used in situations where the entire community receives the same level of services. They also cannot be used to pay for services that are not over and above the level of service provided throughout the entire community. This places a limit on the amount of costs that could be charged to a street utility district.

- The current estimate of $0.33 per $1,000 of property value is a very preliminary estimate based on a comparison of current street lighting costs and numbers of staff per mile of road for the Village versus the City. Tables 3-5 of the consolidation plan show how the total estimated SUD levy of $324,000 was determined. This amount, divided by the Village's current total equalized value of $983,662,800 yields the figure of $0.33 per $1,000.

- For the first year, the budget would be estimated based on a comparative analysis of the historical costs expended by the City versus the Village for streets, sidewalks and street lighting. Costs that could be allocated to the District would include management, labor, benefits, supplies and expenses related to services that are typically provided in the Village but not in the City, or for services that are provided more frequently or require additional time and expense to provide in the Village. Debt service for capital expenditures for items such as street lights could also be charged to the district. Each year, a detailed accounting of actual capital costs, labor hours, supplies and expenses would be kept. If the amount charged to the District exceeded the actual costs, the excess would be credited to district property owners in the following year.

Response to Concerns Regarding the Consolidation Ordinance

1. *Change the composition of the Council to four or five districts, possibly with at-large voting for all seats and staggering of the terms.*

   Committee's Response

   The composition of the Council and the proposed aldermanic districts proposed by the consolidation ordinance are in accordance with State law and would provide fair representation. The proposed aldermanic districts will only be in effect for one election and will be changed by the new Common Council as part of the normal ten-year redistricting program. No change in the consolidation ordinance is recommended.

   Background

   The consolidation ordinance provides for staggering of the aldermanic terms. As currently drafted, two of the districts will have initial terms ending in 2013, three will have terms ending in 2014 and the remaining three will have terms ending in 2015.

   The proposed boundaries of the initial aldermanic districts were drawn using voting wards that are based on 2000 Census data. The current anticipated timing of a referendum vote on the consolidation issues is November 2010. The election of a new Common Council would then take place in April 2011. The 2010 census information will be available in spring of 2011 and redistricting will be completed by the local government units by August 1, 2011. Therefore, the new Common Council will determine the number and shapes of the new aldermanic districts at that time. The district boundaries proposed in the consolidation ordinance will only be in effect for the first election following the consolidation.

2. *A listing of the assets and liabilities of each community should be prepared to place everything in the open.*

Committee's Response

The proposed consolidation cannot be compared to the purchase of a business. Neither community is "selling" all of its assets and liabilities to the other and walking away. The proposal is for the two municipalities to merge their resources into one unit of government that will continue to serve the same geographic area and population. The physical assets of the consolidated municipality will be used primarily to provide services within the combined community, rather than generating revenue from outside of the municipality. Therefore it does not make sense to prepare a list of what each municipality is "acquiring" from the other.

The other issue that has been raised relative to assets and liabilities is that one municipality may be taking on significant liabilities by merging with the other municipality. The consolidation plan took into consideration the existing cash balances, existing debt and major capital projects anticipated in the next five years for each municipality. It also took into account higher annual spending for sewer and water utility maintenance and replacement costs for the Village which has older facilities and typically has experienced higher annual costs. It is not necessary or practical to prepare a list of future capital projects beyond the five-year horizon in the consolidation plan. Preparing a list of the amount and timing of every major capital project for a longer period of time would be a monumental, somewhat speculative undertaking. It is the Committee's opinion that all of the major assets and liabilities that can be known with relative certainty and are of importance to the consolidation discussion have been accounted for.

Background

At various meetings of the Merger Advisory Committee, questions related to the assets and liabilities of each municipality have been raised, including:

- Should the undeveloped land in the City be considered as an asset of the City?
- What are the future liabilities to each municipality for major capital, such as the Village's costs for the Pewaukee Dam and storm water facilities needed to comply with NR 216 regulations, or the City's road maintenance costs and stormwater facilities needed to address flooding issues?
- Should the value of existing infrastructure in each municipality be factored into the consolidation plan?

After considerable discussion on this topic, the Consolidation Plan took the following into consideration:

- Table 1 of the Consolidation Plan shows the amount of fund balances, special assessments levied but not yet collected and estimated special assessments for projects during the five-year horizon.

- Table 1 also shows the amount of existing debt, the amount of debt planned to be issued in 2010 and the anticipated major capital projects for the next five years. These included road reconstruction and the improvements to the Pewaukee Dam.

- In the Appendix B to the plan, the Sewer Utility Capital Improvements Plan includes $195,000 per year of replacement and rehabilitation costs for the City Sewer Utility and $240,000 per year of replacement and rehabilitation costs for the Village Sewer Utility.

- In the Appendix B to the plan, the Water Utility Capital Improvements Plan includes $100,000 per year for the City Water Utility and $200,000 per year for the Village Water Utility.

3. *Lack of a guaranty of the continuation of the Village Police Department to serve the community.*

   Committee's Response

   There are no means under Wisconsin State law for the current governing body of a municipality to bind the actions of a future governing body with respect to its organization. The consolidation ordinance is not a contract between two entities that will continue in existence. It is an agreement to dissolve two existing entities and form a new entity. The governing body of the new city will have the ability to change its structure as it chooses, just as the current Village Board and the Common Council may choose to do. There is no way to guarantee that either the existing Village Board or the Common Council of a consolidated city will continue to maintain the Village Police Department in perpetuity.

4. *A clear review of the ability and options for the new community to organize its own Police Department.*

   Committee's Response

   The merger proposal developed by the Committee is based on the assumption that the consolidated city will expand the existing Village Police Department to provide law enforcement for the entire city. The City's contract with the Waukesha County Sheriff's Department is renewable on an annual basis, with notification required by August 31 of each year. The City must determine by August 31, 2010 whether or not to renew that contract for 2011. Under the currently anticipated timeline, with a November 2010 referendum, if the City renews its contract, then the County Sheriff would provide services to the area within the current City through the end of 2011. The newly elected council of the consolidated city would have until August 31, 2011 to determine how to provide law enforcement services. If the selected option is to expand the Village Police Department, the new city would have until January 1, 2012 to prepare for that transition.

Background

The proposed structure and transition tasks related to forming a police department for the consolidated city are shown on pages 12 and 13 of the "Consolidation Playbook". Estimated costs for the formation of a police department by expanding the Village Police Department are shown in Appendix C of the "Consolidation Plan".

5. *A review of the budget for the interim council (how much and where are the funds coming from).*

Committee's Response

Given the current anticipated timeline, with a consolidation referendum in November 2010, each municipality will likely prepare its 2011 budget independently of the other. Therefore, if consolidation does occur in 2011, the consolidated city will have sufficient revenues to operate both municipalities. The interim council itself will consist of the elected officials of the existing city and village, whose salaries for a full year will be included in the separate 2011 budgets of each municipality. To the extent that operations can be merged during the course of 2011, the reduction in expenses will help offset the costs of professional services or new equipment or software that may be required as part of the transition.

Background

The compilation of transition tasks is shown on pages 26 and 27 of the "Consolidation Playbook". A cost estimate for all of these tasks has not yet been prepared, as the cost will depend on how the interim and newly-elected council choose to proceed with accomplishing these tasks.