

# commonground<sup>®</sup>

Dedicated to public involvement in the development of rational land-use policy

Volume 2, Number 2 Summer 1999

## **Woes, Wins and Wisdom**

Words of advice from those on the front lines of annexation in Wisconsin

## **Litigation vs. Communication**

A closer look at annexation challenges and opportunities around our state

## **A Matter of Perspective**

Annexation from the viewpoint of towns and cities

IN THIS ISSUE

# annexation



# A Welcome to Our Readers

They don't call them "get-togethers" or "meetings" or even "tough negotiations." They call them "wars."

They're talking about annexation, and they aren't smiling when they say it.

In our last issue, On Common Ground® examined the phenomenon of growth in Wisconsin. This time we've focused on a process elected officials and landowners have used to respond to growth and the need for more services for more than a century. It's called annexation and is the statutory authority that allows a governmental entity to assume legal jurisdiction over a particular piece of land.

Cities and villages have it. Towns don't.

Today, as elected officials, residents, planners and businesses attempt to manage this new era of growth in Wisconsin, that difference in who can do what has led to questions about the fairness, effectiveness and appropriateness of the process. There are a lot of vested interests. Everyone has an opinion and not everyone thinks there's a problem. But those on the front lines are clearly unhappy with what they describe as "annexation wars."

As the On Common Ground Foundation began to take a closer look at this complex issue, we departed from our normal process of conducting a statewide survey because we were not persuaded that public familiarity with annexation would be strong enough to provide reasonable measurements. Instead we opted to utilize informal focus or discussion groups involving local officials, property owners and other stakeholders who have been involved in the annexation process. The Foundation would like to sincerely thank the mayors, town, village and county board members, as well as the city council members, attorneys, city managers and property owners who shared their "lessons learned" in our focus groups around the state and gave their time and thoughts to our reporters for this issue's feature section.

We went looking for better understanding. We came back with battle stories and words of wisdom from those who have been and continue to be on the front lines of annexation. You'll have to decide whether we found any answers that might work for your community.

Enjoy!

**Philip H. Salkin, Chairman**

## Contributors



**George Hall** ⇨ Pg. 4

George Hall, director of Municipal Boundary Review for Wisconsin's Department of Administration, opens our magazine with a thorough look at the issues of annexation in Wisconsin.



**Gerald H. Derr** ⇨ Pg. 20

Gerald H. Derr brings his dual experience as Town of Bristol chairman and Dane County Towns Association president to this issue's Talking Across the Fence as he discusses annexation from a town's perspective.



**Edward J. Huck** ⇨ Pg. 21

Edward Huck, executive director of the Wisconsin Alliance of Cities, takes up the viewpoint of cities in annexation issues in the second part of our Talking Across the Fence section.



**Mark Rogacki** ⇨ Pg. 24

Mark Rogacki offers his knowledge and experience as executive director of the Wisconsin Counties Association as he details the role of county government in land-use planning in this quarter's Role of Government section.



**William F. White** ⇨ Pg. 28

William White, a senior partner in the law firm of Michael Best & Friedrich, adds his expertise to this issue's Policy Watch, discussing the changing needs and opportunities of annexation in Wisconsin.



A Closer Look

4 The ABC's of Wisconsin's Annexation Statutes

Voice of the People

8 On the Front Lines in the Annexation "Wars"

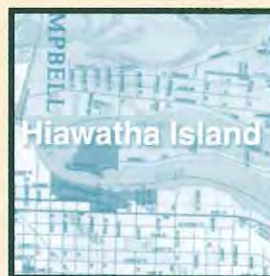
volume 2 | No. 2



Front and Center: Annexation



10 Litigation As Usual  
**Doug Mell**  
No clear cut alternatives to annexation between Hallie and neighboring cities



14 Need for Water Leads to River of Challenges  
**Dick Mial and Joan Kent**



12 The "Dairy Queen Compact"  
**Stan Milam**  
A "not-so-simple" matter of give and take...



16 The Hatfields and McCoys Reach Common Ground  
**Scott Hildebrand**

Regular Features

- 18 It Ain't Easy... **Tom Still**
- 20 Talking Across the Fence
  - Forced Annexation: Barrier to Sound Land-Use Planning
  - Annexation Isn't the Problem — Land Use Is
- 24 The Role of Government
  - County Government Options and Requirements in Land Use

The Policy Arena

- 27 Capitol Watch **Dick Wheeler**
  - My, How Things Have Changed at the Capitol
- 28 Surveying the Land
  - Annexation: Changing Needs and Opportunities for Change

On Common Ground® is published quarterly by the On Common Ground Foundation, P.O. Box 1473, Madison, WI 53701-1473. On Common Ground® is a registered trademark of the On Common Ground Foundation. All rights reserved.

The On Common Ground logo is a registered trademark.



# THE ABC'S OF WISCONSIN'S ANNEXATION STATUTES



**By George Hall**

*Director, Municipal Boundary Review for the Wisconsin Department of Administration*

ANNEXATION — the activity transferring territory from towns to cities and villages — is one of those uniquely Wisconsin land-use regulatory practices that has survived nearly intact since its most recent re-codification in 1959. In light of today's far more complex regulatory environment and keen interest in land use exhibited by all levels of government, annexation now seems downright quaint (others would probably choose far less neutral language). The one common opinion among all parties that I work with is that no one likes the current statute. It is confusing, pitting neighbor against neighbor and towns against cities and villages. It is difficult to comply with and difficult to administer. This statute survives only because all attempts by interest groups to change the law have uniformly failed due to a lack of political consensus. I would like to briefly discuss the statutory aspects of annexation, with some subjective observations gleaned from working with the affected parties, including the courts, over the past 15 years.

## A few subjective observations:

In Wisconsin, annexations initiated by individual landowners may work well for single parcels in need of particular services or where a town desires to remain strictly rural and encourages the annexation of contiguous properties suitable for residential or commercial uses. The framers of the present statute probably thought that urbanization and annexation would proceed apace, but left cities and villages with no practical way to accomplish this objective, if this was truly what was desired.

I do not believe that they envisioned that the contest over development between towns, cities and villages that we have today would ever arise. As we have seen in many situations throughout the state, annexation is becoming increasingly problematic because urbanization, instead of resulting in annexation, has instead resulted in the formation of numerous "urban towns," where annexation matching development spreading outward from a core city or village simply failed to occur, or where growth centers have emerged surrounding various amenities located outside of cities and villages. In part, some of the discontinuity between development and annexation has occurred because of the

total disconnect between local jurisdictional land-use decisions and controls, and state urban service policies.

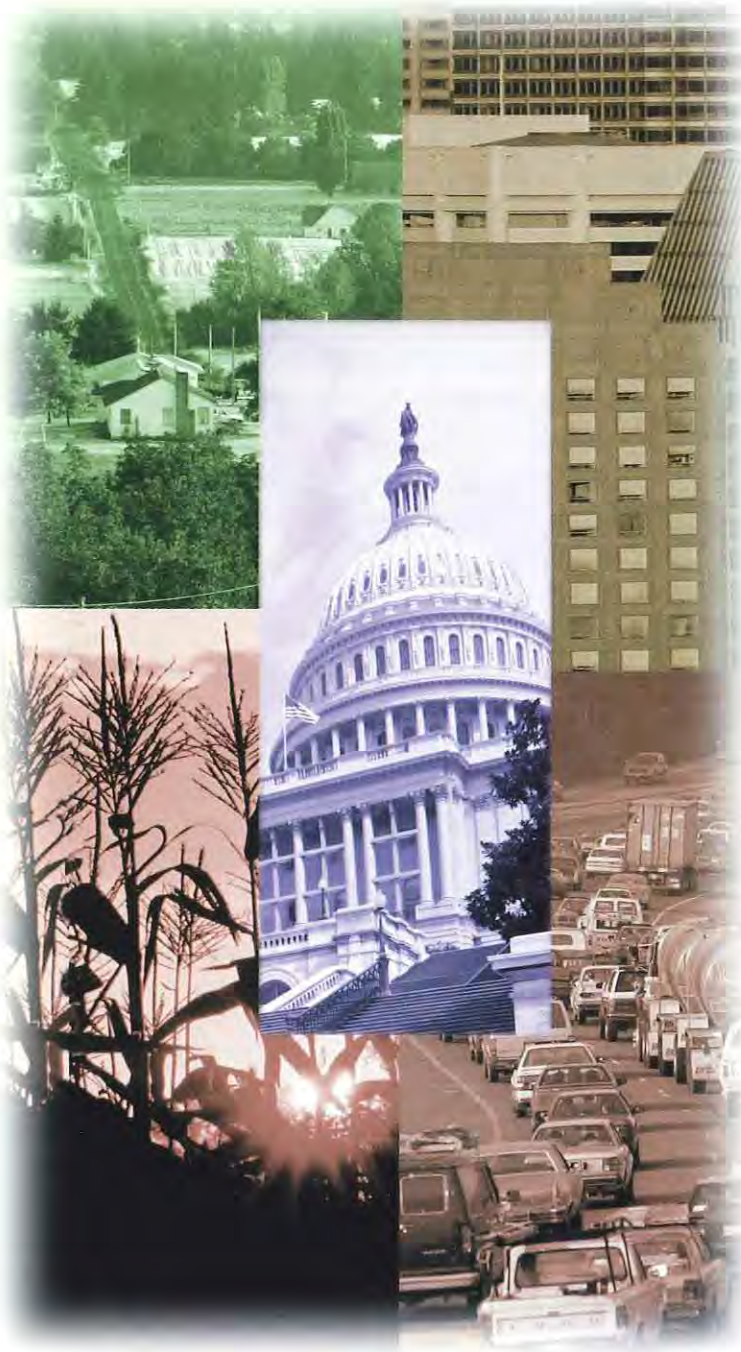
In circumstances like these, policy questions that beg to be addressed include how much credence to continue to give to landowner initiatives — initiatives that may radically differ from public facility investments and land-use plans adopted by towns, cities, villages and counties; and how to treat the growing number of "urban" towns where annexation can sometimes have a very problematic and pernicious effect on a host of town activities.

Currently all annexations, large or small, regardless of their location, types of development they may contain, consistency with plans and ordinances adopted by either the town or the annexing city or village and potential to destabilize intergovernmental relations,

are treated alike by statute. The annexing unit of government need not account for any "spillovers" as a consequence of adopting an annexation ordinance, but the same may be said for the presence or absence of town activities that may have necessitated the annexation in the first place. This issue becomes increasingly problematic as state agencies encourage towns to do land-use and capital-facility plans, plans that may be destroyed by annexation.

"This statute survives only because all attempts by interest groups to change the law have uniformly failed due to a lack of political consensus."





From time to time we see large annexations with a real potential for financially and socially incapacitating an urban town, and yet there is no statutory requirement that requires a response by the annexing community to address whatever concerns have been raised either by the town or by the State. Increasingly the circumstances and impacts surrounding the choice of annexation and annexation process may be so complicated as to warrant the use of an entirely different tool, such as an intergovernmental agreement (for example as enabled by s. 66.023, Wis. Stats.) either prior to or in place of an annexation. But in some cases, one intransigent party will either refuse to come to the table or insist on determining the choice of statutory tool as well as the outcome. From the city/village perspective, annexations may result in only partial acquisition of the territory necessary to complete peripheral development plans or tax increment finance and other types of districts, and may only partially allow for efficient operation of public services and infrastructure. At worst, successive annexations adopted for the best of reasons over time may lead to a frozen boundary and land-use conflicts with no easy solution. The one benefit from problematic annexations is that they may often serve as a catalyst, if the parties are willing to compromise and work hard developing solutions, for true problem-solving to take place.

As interest groups move closer to consensus on the desirability for, content, scope and timing of comprehensive plans that address mutual concerns, and that would presumably be prepared by all jurisdictions, should annexation continue as the principal means of transferring territory from towns to cities and villages? Or should some other vehicle, such as intergovernmental agreements, be used to address the jurisdictional questions necessitated by today's complicated land-use and service issues?

“At worst, successive annexations adopted for the best of reasons over time may lead to a frozen boundary and land-use conflicts with no easy solution.”



## The statutory aspects of



Section 66.021, Wis. Stats., provides three petition methods by which annexation may occur, and these are presented in the order in which they are most frequently used. Because these methods are not presented together, this statute needs to be read in its entirety in order to understand all of the applicable requirements.

### 1. Unanimous approval:

This form of petition is signed by all of the electors residing in the territory and the owners of all of the real property included within the petition. No other signatures or approvals from any neighbors, whether they are in the annexing community or the town, are necessary. Petitioners must submit copies of the signed annexation petition to the clerks of each municipality affected, as well as the school district.

### 2. Notice of intent to circulate petition (direct petition for annexation):

A “notice of intent to circulate petition” is first published as a Class 1 legal notice, and sent within five days of publication to the clerk of each municipality affected, each school district affected and each owner of land within the territory proposed for annexation. Failure to properly notice these entities may, if the annexation is litigated, cause the petition to be overturned. The petition must be signed by a majority of electors in the territory who cast votes for governor in the last gubernatorial election, and the owners of one-half the real property either in value or in land area. If no electors reside in the territory, then only the landowners need sign the petition. The notice shall contain the items specified in s.66.021 (1) 3, Wis. Stats. This form of petition allows petitioners to bring unwilling owners and electors with them, and to petition for annexation parts of tax parcels lying within a town. (Should non-owners be allowed to continue to create artificial tax parcels from neighboring properties without benefit of land division authorized by the owner? Or, when non-consenting owners are included, should specific safeguards — either by plan or by ordinance — be required by statute?) **Failure to obtain proper signatures, including authorizations to sign from private corporate bodies, constitutes the most frequent and easily litigable error.**

### 3. Annexation by referendum:

A petition requesting a referendum election on the question of annexation may be filed with the village or city when signed by at least 20 percent of the electors in the territory who cast votes in the last gubernatorial election (see s. 66.021 (2) (b), Wis. Stats., or contact Municipal Boundary Review for more information). This annexation method is rarely used; and when used, it is almost never successful.

## Annexation maps and legal descriptions:

Annexation maps deserve special mention, because petitioners should know that maps of petitioned territory need to be sufficiently accurate to enable state and local agencies to properly determine whether any land subject to state and county regulation may be affected. Although certified survey maps and subdivision plats are not required by statute, they nevertheless offer the most assurance that the information required by statute will be displayed. Legal descriptions should not reference any external document such as a county deed volume and page.

## Review of municipal annexations by the State:

Only municipal annexation petitions filed in counties having a population of 50,000 people or more require an advisory review by the State. This statutory review, which follows the criteria found in s. 66.021 (11), Wis. Stats., is advisory; it provides advice to be considered by the annexing municipality before passing an annexation ordinance. Advisory opinions prepared by the State are increasingly being introduced as evidence in circuit court, and may be followed by a request to the Department of



Administration to provide depositions and/or oral testimony as annexations are litigated. Issues the State looks at include:

- (1) whether governmental services, including zoning, required by the territory could clearly be better supplied by the town or by some other village or city whose boundaries are contiguous to the territory proposed for annexation;
- (2) the shape of the proposed annexation and the homogeneity of the territory with the annexing municipality and any other contiguous city or village;
- (3) "and in consideration of the objectives recognized by the legislature — to prevent haphazard, unrealistic and competitive expansion of municipalities which disregards the overall public interest" (Incorporation of the Town of Pewaukee, 186 Wis. 2d 515, 525 (decided July 27, 1994)).

In situations where intergovernmental conflicts arise, the State may suggest other remedies, including mediation, alternative dispute resolution and intergovernmental agreements. Although some organizations have questioned continuing to review annexations at all, maintaining local contact through annexation reviews provides a gateway to building important state-local relationships with elected and appointed officials and their attorneys. These relationships become extremely important as complex state-local issues erupt, when the Department of Administration may be called upon to help provide alternative problem-solving processes and alternative solutions, or asked to bring other state and local agencies to the table. At the very least, if the parties choose to contact us, we can usually help them to avoid mistakes.

## Miscellaneous annexation requirements and issues:

Annexation errors that are frequently litigated include:

- (1) town island problems: However, so long as two or more separate jurisdictions (the annexing municipality and another town, city, or village) touch remaining town lands, no town island is created — at least at the present time (following the language from *Wagner Mobil, Inc.*, 190 Wis 2d 585, 527 N.W. 2nd 301);
- (2) land annexed must be contiguous to the annexing city or village, unless a municipality is using s. 66.025, Wis. Stats., in which case no privately-owned parcels may subsequently be attached. Municipalities annexing land using s. 66.025, Wis. Stats. should notify the county zoning office and regional planning or county planning agency (if any exists), as proper zoning will need to be

obtained before the parcel(s) is annexed. But remember, "contiguous" as defined by case law has many meanings (for example, touching diagonally opposite at a point is permitted, but balloons-on-a-string are prohibited); and

- (3) no person who has signed a petition shall be permitted to withdraw his or her name, and no additional signatures shall be added after a petition is filed; in other words, annexation petitions cannot be amended, and must be re-submitted.

Any ordinance should include relevant street, county and state highways, as well as railroad right-of-ways that adjoin parcels proposed for annexation (an unwritten "rule" or "tradition" provides that public property necessary to make an annexation work may be included in a unanimous consent petition). Shoreland, floodplain and shoreland wetland zoning provisions in effect prior to annexation remain in force until or unless a city or village enacts an ordinance at least as restrictive as the county regulation in effect at the time of annexation. If road right-of-way included within a petition is provided by easement, the fee-simple owner of the easement, if different from the petitioner, or other abutting property owners or electors, may also need to sign the petition, particularly if the petition is filed as a "unanimous consent" petition. In addition, for the "notice of intent to circulate petition" type of annexation, the owners of these easements are entitled to notice as provided by law.

"Need" is one of those obscure topics that is frequently asserted and confused by everyone: "Need" ascribed to the annexing community does not typically become an issue unless the annexing community can be shown to have strongly influenced the design of the petition. Otherwise, "need" refers to whatever the petitioner says influenced the filing of the petition, and is most often inferred without ever being questioned by the courts. For this reason, municipal annexations are typically designed and initiated by some combination of landowners and/or electors and not usually originated by villages or cities as is commonly thought. Many local officials realize that too much involvement by cities and villages may trigger judicial "rule of reason" issues.

All of the foregoing is, of course, perfectly clear and understandable, right? Perceptive readers will conclude that annexation procedure and practice is a combination of statutory instruction, case law (largely dependent upon the initial familiarity with the statute by the county circuit court of origin) and unwritten stratagems made necessary in order for the system to function.



# ON THE FRONT LINES IN THE ANNEXATION “WARS”

*Editor's note: Focus groups have long been used as tools to understand how consumers, voters and decision-makers form their attitudes, make decisions and take action on issues of importance to them. In preparing this edition of On Common Ground, we took advantage of this valuable qualitative measure of attitudes and values to delve into the annexation experiences of citizens and community leaders in four areas of the state. The following article is a summary of the experiences, lessons and recommendations expressed by these local officials. It does not reflect the attitudes or position of the authors or editors of On Common Ground or the On Common Ground Foundation.*

In cities, towns and villages throughout Wisconsin, the mere mention of annexation provokes frustration, hostility and confrontation among elected and appointed officials and landowners. And when city council members, town board members, attorneys and community planners met recently to talk with *On Common Ground* about annexation in focus group discussions throughout the state, they had lessons to share and advice to offer to others facing the frustration they shared.

Annexation disputes have been a fact of life for Wisconsin communities for as long as anyone can remember. For the past 30 years, panelists could not remember a time when there has not been an annexation dispute in Hallie, a small town situated between Eau Claire and Chippewa Falls. Annexation was plagued the Town of Menasha north of Oshkosh for 35 years, and Town Board Chair Arden Tews was tired of it. “It affected people on both sides, there were bitter discussions that hindered [the delivery of important] services to people.” Between the City of La Crosse and the Town of Campbell, annexation issues in one form or another make up a patchwork quilt of conflict spanning dozens of years.

Aside from the time and money spent in battling annexation, focus group participants agreed that border disputes take a staggering toll in personal animosity between neighbors. This hostility poisons the ability of communities to cooperate in other areas of mutual concern to provide important services to their respective citizenry.

Public officials in all focus groups agreed that state laws “do not facilitate resolution of annexation, they are antiquated.” Annexation laws, tax increment financing (TIF) laws, incorporation regulations, farmland preservation statutes and a host of other policies and programs that affect communities’ ability to plan, grow, and protect their tax bases have produced an environment that drives the escalation of confrontation, litigation and cost.

For communities still mired in border wars, these regulations have contributed to the problem and at the same time hold out hope that one side or the other will ultimately prevail — that there will, when the dust settles, be a winner and a loser. For other communities, state regulations have produced a “recognition that there has to be a better way to coexist.”

**“Aside from the time and money spent in battling annexation ... border disputes take a staggering toll in personal animosity between neighbors.”**

While local governments wait and hope for legislation that is responsive to communities at the dawn of the 21st century, some local officials have taken matters into their own hands, pursuing that “better way to coexist.” In two of our focus groups, panelists talked about their experiences in negotiating recent border agreements. Although frustration and in some cases hostility had been high before negotiations began, the

resulting agreements were described as major achievements for the governments and the citizens affected.

For example, a bitter annexation dispute between the Village of Hartland, the City of Delafield and the Town of Delafield was a win for everyone, according to officials of all three communities. The agreement ensures that the village and the city will be able to plan for orderly growth, and that the town will have secure borders and can remain economically viable.

A recent border agreement between the City of Menasha and the Town of Menasha also resulted in wins for both communities. But it went much further than that. The successfully negotiated agreement paved the way for greater trust and cooperation between the governments. Menasha Town Planner George Dearborn said, “Now we don’t have to spend money on attorneys to fight, resources can now go to addressing important issues we want to move on.”



Cooperation has resulted in intersection upgrades, sidewalks, and road improvements that had not been possible before both parties came to the table.

“Constituents on the borders are better served,” and “citizens are the ultimate winners.” Indeed, it was a concern for the citizens of these communities that panelists say got them to the table in the first place. “Think of your constituents,” advised one panelist to others on the battle lines of annexation wars. Another public official added, “We have an obligation to residents overall.”

However the parties finally came together, focus group participants say that the players must be vested in the negotiation process and persuaded that an agreement is in the best interests of his or her constituency. People who can maintain that focus can reach successful, win-win agreements.

## What are the other ingredients in successful border agreements – A perspective from our focus group participants

### 1. A level playing field

Perhaps the most important requirement is a level playing field. Representatives of towns describe the attitude of some cities and villages as arrogant. The “concept of towns as land banks is an antiquated concept. It’s unfair.” Yet towns feel that they are, indeed treated as giant land banks from which cities and villages make withdrawals as they see fit, leaving towns with fewer resources to serve residents. Some town residents feel their communities take “one hell of a beating.” Another panelist added, “Each community needs to remember they have a neighbor, and you can’t slam dunk your neighbor.”

Public officials agreed that everyone comes to the table as equals when “both sides have something the other side wants very badly.” It was this realization that broke the log-jam in Delafield and started negotiations that would ultimately make everybody a winner.

### 2. Talk early and talk often

This level playing field is built on a willingness to “say yes, I’ll listen, I’ll talk, I’ll keep an open mind.” Universally, panelists in our focus groups — including the two instances where the annexation controversies continue — said that the worst thing that happens during border wars is that neither side will talk to the other. “We got where we are,” said one local official, because “there is no communication, no coordination.” Another city official agreed, “Dialog is essential, frank and serious discussions. The root of this difficulty is misunderstanding. You have to talk before things get polarized.”

On the other side of the coin, the most constructive thing that happens with negotiation is that both sides talk to each

As for the future, both unresolved border disputes — Campbell and Hallie — see no end in sight. In all likelihood, for Hallie, the ultimate resolution will stem from litigation, while officials hold out hope that a mutually acceptable resolution is possible. In the meanwhile, it is difficult for any of these communities to plan and they continue to pour money into legal maneuvers.

For communities with border agreements, the cooperation continues. Local officials are persuaded that cooperative, long term land-use planning is essential to everyone involved and the only way to prevent future disputes. Current agreements allow communities to plan and invest with confidence and to apply resources to best meet the needs of the citizens. As one local official said, “One success is going to help us build in the future.”

other. Delafield Town Chairman Paul Kanter described his experience this way: “Villages and cities that wouldn’t talk to us before, started treating us with respect once we sat down to negotiate. My frustration evaporated.” Greg Keil, community development director for the City of Menasha said, “This agreement moved us from a culture of conflict to a culture of cooperation.”

### 3. Focus on your priorities and be willing to compromise on everything else

Once they get to the table, both sides also need a clear idea of their priorities and the willingness to compromise on issues of less importance. “To get, you have to give,” said one panelist in summing up the comments of others at the table. Compromise is easier if the parties “try to respect each others’ point of view.” “Nothing is that difficult that it can’t be worked out,” and “you will win in the end but you’ll have to give up something.”

### 4. Put personal feelings aside

Our panelists advised that the most difficult hurdles to overcome in any attempt to settle an annexation dispute are the long-term nature of annexation disputes, the personality conflicts and the expectation that the future has to look like the past. In both unresolved disputes, the parties have been haggling for a long time. The players are, by and large, the same as they have been for many years. There is a lot of pent-up frustration and hostility. In some cases, the issue has become personal. By contrast, agreements have been forged either by newcomers to the issue or by those who have decided that there has to be a better way.







# LITIGATION AS USUAL **Hallie**

No clear cut alternatives to annexation between Hallie and neighboring cities



**By Doug Mell**  
City editor,  
Eau Claire Leader-Telegram

Lee Markquart wants to sell cars and trucks, not worry about how his sewage will be disposed of or where he is going to get water.

But Markquart, who owns a series of vehicle dealerships on U.S. 53 between Eau Claire and Chippewa Falls, worried that one day he would have too much waste and not enough water to continue in business.

“We had to get our sewer system resolved,” Markquart said.

So Markquart, along with a handful of other property owners in the town of Hallie, launched a petition drive to be annexed to the City of Eau Claire. That annexation would give Markquart and his allies the ability to connect to the city’s sewer and water mains. Those services are unavailable because neither the cities of Eau Claire nor Chippewa Falls — which are south and north of Markquart’s property — will extend the necessary pipes without annexation.

“If there ever was a time when Hallie wasn’t fighting about annexations, few people remember it.”

That annexation petition touched off yet another battle royale between Eau Claire and Hallie, two combatants in a land-use war that has been skirmishing on and off for decades. “I guess the easiest thing to say is that all hell broke loose,” Markquart said of his annexation petition. While the Eau Claire City Council eventually decided against the annexation petition, Markquart has made it

clear he will be back with a new request — and Hallie officials have upped the ante.

They have filed notice with the state that they want to spin part of the town off into a village — to be called Lake Hallie — to protect just over 14 square miles from annexations by either Eau Claire or Chippewa Falls. This incorporation battle — like many of the fights between Hallie and its city neighbors — has taken on a life of its own in the courts.

If there ever was a time when Hallie wasn’t fighting about annexations, few people remember it.

There have been nasty and expensive battles over Chippewa Falls and Eau Claire refusing to provide sewer service without annexation. One case was settled by the Wisconsin Supreme Court while another was decided by the U.S. Supreme Court. When the dust settled, Hallie was not able to force either municipality to budge from their policies.

Hallie then shifted tactics. From the May 15, 1989, issue of the *Leader-Telegram* in Eau Claire comes a story about the Hallie Town Board “moving right along with its fight to save itself from being incorporated into the city of Eau Claire.” That effort eventually fizzled out.

## So why have the fights continued?

“I think it’s just basically a problem with state law,” said Don Norrell, Eau Claire’s veteran city manager. “The way the state law was written, townships were created as a holding vehicle for farmland until development occurred. If you really look at it, for cities to grow, towns have to get smaller. State law has created a win-lose proposition for cities and towns.”



But annexations occur all the time and relatively few are so contentious they end up in court. Why are those involving Hallie different?



Lee Markquart

“Hallie has adopted the position that they will fight any annexation,” Norrell said. “Any annexation of their property is unacceptable. We don’t see the same holding true in (the neighboring towns of) Washington and Seymour.”

Paul Gordon, Chippewa Falls city attorney, said he can understand why

Hallie officials are sensitive

about losing land through annexations. “I think Hallie has a couple of concerns other townships don’t,” Gordon said. “In Hallie, there is (development) pressure from the north and south, and the (Chippewa) River on the west. They really do have pressure from a couple of different directions.”

Plus, Gordon said, Hallie has decided to have its own police force and is heavily involved in a fire protection district. “There are a couple of things here in Hallie that do tend to make it perhaps more interesting when it comes to annexations and retaining tax base.”

Markquart said he has pondered the Hallie annexation issue a lot. “I didn’t think annexation would be a problem for me down the road,” Markquart said, adding that he viewed the land between Eau Claire and Chippewa Falls as prime for development and growth.

“I just think they (Hallie officials) have had a culture out there that said, ‘We are going to fight annexations anyway we can.’ I don’t understand that from a logical standpoint.”

Markquart said the tough stand on annexations — resulting in the lack of municipal services in the prime development area — is stifling economic progress. “If the town of Hallie can’t provide (those services), I don’t think that (land) is going to develop to the point it should.”

But Hallie residents see it as a matter of survival and a matter of fairness.

“Our tax base is eroding rapidly in Hallie,” said David Oestreich, a leader of the current incorporation drive. “We as a township are going to take one hell of a beating if annexations don’t subside.”

John Andersen, another incorporation-drive leader, traces the problem back to the 1970s when Hallie and other towns supported Eau Claire’s application for federal grants to build a new sewage treatment plant. While this is in dispute, Andersen claimed the city promised that the sewage service would be available to outlying areas without annexation, which obviously hasn’t happened.

“The dialogue ceased when Eau Claire changed its policy on annexation” to receive municipal services, Andersen said. “It’s a long and bitter history that is not going to go away.”

Steve Gibbs is an Eau Claire attorney who fights for Hallie on annexation matters; he certainly doesn’t apologize for the aggressive stance the town board has assumed in these matters.

“The citizens of Hallie don’t want to become part of Chippewa Falls or the City of Eau Claire,” Gibbs said. “They want to have their own identity and own governmental control. They don’t want to be swallowed up by Big Brother coming in to take what it wants.”

But Eau Claire and Chippewa Falls officials vehemently deny they force

anyone from Hallie to file annexation petitions.

“We don’t aggressively seek annexations,” said Bill Nielsen, president of the Eau Claire City Council, as close to a mayoral position as Eau Claire has. “We respond to petitions.”

**“Hallie” continued  
on page 30**

“The way the state law was written, townships were created as a holding vehicle for farmland until development occurred. If you really look at it, for cities to grow, towns have to get smaller. State law has created a win-lose proposition for cities and towns.”



# THE "DAIRY QUEEN COMPACT"

## A "not-so-simple" matter of give and take....



**By Stan Milam**  
*President, Capitol News Service*

When Town of Delafield officials decided in 1989 to condemn an acre of Joe and John Geason's land and use it for access to Highway 83, they had no idea the seemingly minor land acquisition would be a key element in a historic annexation agreement signed earlier this year to protect the town's border.

The single acre pales in comparison to what was at stake in a 1998 tentative agreement worked out by the town and Village of Hartland. The deal had Hartland annexing 70 acres of the Geason property located in the town in exchange for signing a border agreement with the town. That deal nearly fell through when Geason later petitioned the City of Delafield to annex his land.

As the city was preparing to annex the Geason property, the town also filed a petition as a property owner. The "property" referred to in the town's petition was the single acre of land taken a decade ago for Highway 83 access.

The battle lines were set. The Geasons asked the city to annex the land. The town and Hartland had a deal to annex the Geason property into Hartland in exchange for a border agreement in which the village agreed not to take any more town land.

But there was no such agreement between the town and city. The entire matter was ready to fall apart and end up in a lengthy court battle, much the same way other annexations end up.

In fact, multiple lawsuits filed by the town were pending. The town sent out a message that it was willing to litigate forever, if necessary, to get a border agreement.

The dispute threatened to derail what became known as the "Dairy Queen Compact." Hartland administrator Wally Thiel and City of Delafield administrator Scott Botcher met at the Dairy Queen at I-94 and Highway 83 where they scribbled out a map on a napkin and decided to take the plan back to their respective governing bodies.

Meanwhile, Town Chairman Paul Kanter had a singular goal. He wanted a border agreement, and he knew he'd have to give something

up to get one. The problem was, the town was in danger of being left out of the loop if the city annexed the property.

In the end, Kanter persuaded the city and Hartland to include the town in a historic three-way deal that provided the village and city with additional land, a border agreement sought by the town and municipal services sought by the Geasons.

**"Each community needs to remember they have a neighbor, you can't slam dunk your neighbor."**







That's the summary version of one of the most innovative land annexations in Wisconsin, but the details show it took much more than a picture on a Dairy Queen napkin and a 10-year-old condemnation to sign, seal and deliver the deal.

For Thiel, it took a Friday night car ride.

"I do my best thinking while I'm driving," Thiel said. "I remember the Friday when Tim Karbler came into the office and said he'd like to be annexed into the village because it just seemed to make more sense for him."

The Karbler request came at a time when it appeared as if the Geason property would go to the city. The Geasons petitioned the city, and there seemed to be no recourse for the town and village.

"I started thinking about the Karbler property and just kept driving," Thiel said. "I was at the I-43 exit at Cedarburg when it hit me."

What hit Thiel was a plan to use the Karbler property as a petition for village annexation including the Geason property. The Karbler land represented 50 percent of the property in question; therefore, it qualified as a competing petition to the Geasons' petition to the city.

The only problem was Karbler wasn't interested in getting in the middle of the legal entanglements. That's when the town stepped in as a property owner.

The competing petitions set up the legal battles that ultimately resulted in the historic three-way agreement. All three parties claimed victory.

## The City of Delafield

"Everybody benefited and everybody gave something up," said Botcher, now the city manager in Chanhassen, Minn. "We got into this because the Geasons wanted to be part of the city. We ended up getting some property and water service to a key area. What we gave up was most of the Geason property, because I believe we would have prevailed in court."

Although he believed the city would have won a court battle, Botcher said it would have dragged on for years.

"In that sense, the agreement was another plus for us in terms of not having to go through all that," Botcher said.

## The Village of Hartland

The idea of a border agreement intrigued village president Dave Lamerand. "Paul wanted a border agreement, and I wanted the village to fulfill its land-use plan," Lamerand said. "The land in question has always been part of our land-use plan since it was developed."

If the issue had been up to Kanter and Lamerand, there would have been no delays. "Paul walked in and asked what I needed for a border agreement," Lamerand said. "I pointed to the land-use map and said we just wanted to put into place our development plan."

## The Town of Delafield

Throughout the entire ordeal, Kanter remained a constant. His goal was and is to secure a border on all sides of the town. The border is a singular objective that supercedes all other issues.

Kanter, a federal prosecutor, started working on the border issue with the village months before his election as town chairman in April 1997. Most of those preliminary discussions were held with Lamerand.

"The idea of a border agreement was not new," Kanter said. "The previous chairman had tried, but let's just say that I took a different approach."

Kanter decided to look for compromise and agreements knowing that he always had the threat of lengthy lawsuits in his back pocket. He had the backing of his board, but there was never a doubt the legal avenue would be used if necessary.

"We have to defend our borders," said Town Supervisor Jack Perry. "If that means litigate and litigate and litigate, that's what we were prepared to do."



*Town of Delafield Chairman Paul Kanter*

**"Delafield" continued on page 30**





# NEED FOR WATER LEADS TO RIVER OF CHALLENGES



**By Richard Mial**

*Opinion page editor, La Crosse Tribune*

**and Joan Kent**

*City Hall reporter, La Crosse Tribune*

A couple of dozen homeowners coming into the City of La Crosse to get better water started one of the biggest annexation fights of the 1990s.

And before it is over it could redefine the way this city of 50,000 works out its difficulties with its neighbors.

But Rich Morkwed was not thinking about intergovernmental relations when he joined several Town of Campbell neighbors in annexing to La Crosse. His well was failing and he wanted better water.

“The water just wasn’t good,” he said. “The tanks and toilets were getting black. There were all kinds of sediments in it. Some days you couldn’t hardly stand the smell of it. It was a matter of need, absolute need, that started this annexation,” he said during a focus group held in La Crosse by *On Common Ground*.

Altogether, 49 property owners came into the city from Nakomis Avenue on Hiawatha Island, one of the town’s more upscale areas. Town officials responded by filing suit in La Crosse County Circuit Court to challenge the annexations and a Public Service Commission order that allowed La Crosse to extend a water line to the residents. They also revived a plan to incorporate into a village, which would prevent any future annexation attempts since only property in towns can be annexed.

La Crosse fought back with a lawsuit of its own, to challenge the town’s incorporation effort.

## KEY FACTS . . .

*in the proposed agreement between the Town of Campbell and City of La Crosse are tax base, water, litigation, incorporation and economic development.*

- **Tax base:** Eventually, all of Hiawatha Island, a small island with upscale homes between the city and the main French Island, would go to the city. The city has already annexed 49 of the 112 parcels of property on the island. Those 49 properties had an \$8.2 million tax base in 1998 and brought the city \$94,643 in tax revenue. Under the agreement, La Crosse would get 63 more properties valued at \$9.5 million, which was worth \$109,848 in tax revenue in 1998. Properties that hook up to city water would go to the city when they are sold. Owners who do not hook up to city water would be allowed one transfer to a

*child without annexation, but the next transfer would result in annexation even if the owner had not hooked up to city water. Another piece of property, called the “Edwards Annexation,” would return to the town. Properties owned by city employees, who have annexed to meet the city’s residency requirements, would return to Campbell if sold to a person not required to meet the city’s residency requirements.*

- **Airport:** La Crosse Municipal Airport is located on French Island. Any property the city acquires exclusively for airport purposes would become part of the city unless the annexations would reduce Campbell’s territory to less than the four square miles required for incorporation.

- **Water:** The town would construct a water distribution system to serve French Island. It would pay about half the cost of



All of this was depressingly familiar. La Crosse and its neighbors for years had been settling their differences with lawsuits and bluster.

But then two things happened to change the situation. In April 1997, the town elected a new chairman, Dan Kapanke, and the city elected a new mayor, John Medinger. Shortly after they were elected, Medinger and Kapanke had a long breakfast, to see if there were alternatives to going to court. Afterwards, they agreed to meet again. Both leaders seem to believe passionately that long legal battles are a waste of taxpayers' money.

"I think I was elected to solve problems," Medinger said during a focus group held in La Crosse by *On Common Ground*. "I was not elected to defer to the court. It's always been my position as an elected official involved in politics for a long, long time that it is my function to solve problems that come across my desk, and not let the courts do it. The issue here is cooperation rather than confrontation; cooperation rather than litigation. And the enemy is not our neighbors that abut the City of La Crosse. Our competition, our enemy is in Eau Claire, Rochester, Green Bay, Milwaukee, Madison. We have to work together or we're going to be left behind."



**"The issue here is cooperation rather than confrontation; cooperation rather than litigation."**

"We've got a major employer in town quitting in a matter of weeks," Kapanke said, referring to the closing of the Stroh Brewery in La Crosse. "Campbell, Onalaska, La Crosse, everybody should be working to make sure that we have jobs for these people and that we stay sound economically. We've spent upwards of \$200,000 in the Town of Campbell for legal fees and for engineering to fight this annexation. We could take that \$200,000 and

provide education and bring in businesses, whatever. Wouldn't that be better for the entire Coulee Region than what we're doing?"

Meetings between the two community leaders soon included town and city staff members and attorneys. Then town board members and the La Crosse Common Council president began attending.

What emerged from the series of meetings was a plan to draw up a boundary agreement to dismiss all of the lawsuits. La Crosse eventually would annex the entire Hiawatha Island residential area, Campbell would get to file incorporation as a village without the city's active opposition and the city would supply water — at a surcharge — to the entire town.

**"Campbell" continued on page 31**

*extending a large water main, which the city has already run into Hiawatha Island, to a water main that would connect with three city wells located near La Crosse Municipal Airport on French Island. Campbell's estimated share would be \$404,000, and the city's share, \$393,000. Campbell residents would pay the city water usage charge plus a 25 percent surcharge for the 30-year life of the agreement. After 30 years, the Public Service Commission would set the rate.*

*• Litigation: The town would dismiss its suits challenging annexations. Prior to signing the agreement, Campbell would be allowed to make sure it has retained the four square miles required to incorporate.*

*• Incorporation: The city would not appear at the hearing to express opposition to the town's incorporation as a village. The*

*city has already contested the incorporation and would not withdraw those documents. The city and town would submit the agreement to the hearing examiner, and neither side would appeal the examiner's decision.*

*• Economic Development: The city would receive a minimum of \$15,000 and maximum of \$75,000 per year indexed to inflation in tax revenue on property in a development zone on French Island near Interstate 90 for 30 years.*

*• Transit: Campbell would receive bus service from the Municipal Transit Utility starting Jan. 1, 2000, and pay for the service on the same formula used to establish bus service in neighboring La Crescent, Minn., and in a pending contract with the suburb of Onalaska.*



# THE HATFIELDS AND McCOYS REACH COMMON GROUND



By Scott Hildebrand

Covers the State Capitol for  
the Green Bay Press-Gazette

Forrest Weber remembers the not-so-good old days when officials from the City and Town of Menasha preferred bickering to talking and listening.

Weber, a City of Menasha alderman, recalls that people living on a street separating the City and Town could expect to be treated as second-class citizens.

“For years, that street was not paved,” he says. “You didn’t dare go over 15 miles an hour unless you wanted to realign your car. It didn’t get taken care of for a long, long time because the two parties just couldn’t agree on how it would be done.”

But times are changing for a city and town whose Hatfield-and-McCoy relationship goes back for decades. Although everything may not be hunky-dory for the neighboring communities, their leaders are learning that cooperation and communication beat conflict and tension just about any day of the week.

What one city official describes as a “culture of cooperation”

culminated late last year in an intermunicipal cooperative boundary agreement. The 20-year agreement ended five decades of dispute over city annexations of town territory. It also is paving the way for discussions on other issues that would have been unthinkable even a few years ago.

“It makes the best long-term sense for both entities,” City of Menasha Mayor Joe Laux says. “And I believe over time, we’ll start working closer and closer together on a lot of issues.”

The story of how the two Fox River Valley communities came together to work out the deal could have lessons for other areas around the state that face similar situations, according to Richard Stadelman, executive director of the Wisconsin Towns Association.

“It’s a very positive agreement,” Stadelman says. “There were years of confrontation, as is typical with a lot of city-town relationships. This settles the disputes. You avoid confrontation and legal costs. You have the stability of knowing what’s going to happen to your boundaries.”

The people involved in working out the Menasha boundary agreement offer numerous ideas about why they were able to achieve what their predecessors could not.

They say changing times and new attitudes played a role. They got tired of waiting for the Legislature to deal with a range of issues affecting local governments. But more than

anything, both sides benefited.

Menasha Town Administrator Bob Vitas puts it this way, “There has to be something for both sides to walk away

**“The annexation boundary looked like it was drawn by a monkey with an etch-a-sketch. We knew we were pushing the bounds of what was reasonable and prudent.”**





from the table with, recognizing that each side will walk away losing a little bit of something.”

The city wanted to expand its borders and increase its potential for economic growth and development. The town wanted to gain control over its long-term future by diminishing the threat of annexations.

It took a bitter battle to get the two sides to the negotiating table. In 1997, the city began an aggressive annexation of about 65 acres of town land. The city had purchased 32 acres with the idea of developing it through the creation of a tax increment financing (TIF) district.

Greg Keil, community development director for the city, says city officials knew the annexation would bring town officials to the table.

“The annexation boundary looked like it was drawn by a monkey with an etch-a-sketch,” he says. “We knew we were pushing the bounds of what was reasonable and prudent.”

The town responded, predictably, by opposing the annexation. But as the dispute made its way to court, something unusual happened. The two sides sat down and began talking about their differences, at first with the assistance of a mediator. They soon decided they could accomplish more without outside help.

When they reached the point where it looked like they would have an agreement, city and town officials realized they had one more crucial step: to talk to the public. They had to get past citizen opposition, particularly from people who would end up on the city side of the border and had concerns about rising property taxes.

Local leaders held four public information meetings on the proposal. To provide for maximum participation, they held the meetings at night and on weekends.

Nancy Barker, a Menasha alderperson and longtime resident, says keeping the public informed is vital in developing a boundary agreement. “You have to be truthful with the citizens about the pluses and minuses of any of these agreements,” she says. “People can get ideas in their head and think they’re going to be invaded by a Sherman tank.”

“There has to be something for both sides to walk away from the table with, recognizing that each side will walk away losing a little bit of something.”



The agreement, which took effect last November, will bind future town boards and city councils. Under the agreement, no annexation may occur unless there is a simultaneous detachment of property whose value is within 20 percent of the value of the annexed area.

The boundary agreement also includes a provision intended to lead to formation of a town utility district. The utility district will be owned and operated by the town and will provide sanitary sewer and water service to residents of numerous communities.

City and town officials know that their future will not be trouble-free. But they say it will be difficult to change course after taking what they consider a historic step.

The new atmosphere is evident at periodic meetings involving elected and appointed officials from the town and city. They are talking about issues of mutual concern, including a pedestrian trail across a border and park and recreation programs.

The citizens of both communities are seeing the upside. If future town boards or city councils try to cancel the agreement, they would probably run into stiff opposition, community leaders say.

The boundary agreement also gives local officials an opportunity to spend more time on what they’re elected or hired to do: serve the people of the city and town.

“No longer do we have to worry and spend funds on attorneys to address threatened annexations,” says George Dearborn, community development coordinator for the town. “Our energy can go toward mutual efforts to accomplish things. That’s just getting started.”





# "IT AIN'T EASY..."



**By Tom Still**  
Associate editor,  
Wisconsin State Journal in Madison.

*While plowing his fields, a Wisconsin farmer who lived on the edge of a big city found an old and mysterious lantern. He rubbed it and a genie appeared, offering to grant him a single wish. The farmer thought for a second and said, "Build me a bridge across Lake Michigan so I can drive over and visit my relatives in Kalamazoo."*

*The genie looked pained. "That's an awfully long stretch for a bridge. Make another wish — that one's too hard."*

*The farmer gazed across his field at the encroaching sprawl of the city and said, "OK, then, convince the Legislature, the cities, the counties and the towns that they should agree to rewrite the state annexation law."*

*The genie scratched his head and replied: "Would you prefer a two-lane or a four-lane highway on that bridge?"*

Of all the seemingly intractable land-use issues in Wisconsin, annexation may be the one even a genie couldn't wish away. When people talk about annexation in Wisconsin, words like "war" and "battle" inevitably creep into the conversation, a sure sign that ideological trenches have been dug and the combatants aren't willing to yield a square foot within a fight.

But does Wisconsin's version of The Hundred Years War need to drag on into the 21st century? Are there ways to resolve annexation disputes without creating as many losers as winners?

Those questions were at the heart of a recent *On Common Ground* focus group discussion in Madison, where some of the generals in Wisconsin's annexation wars were invited to

the table to discuss what's wrong with the status quo — and to suggest possible solutions.

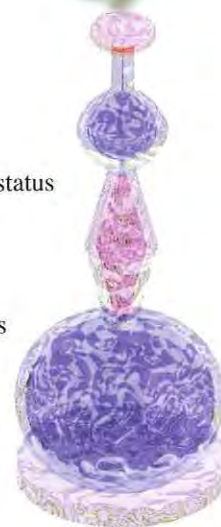
Gathered in Madison were leaders of the League of Municipalities, the Wisconsin Towns Association, the Wisconsin Counties Association, the Wisconsin Realtors Association, the Wisconsin Farm Bureau and experts who follow annexation issues for the UW-Madison and the state Municipal Boundary Review office.

Like any peace parlay, this one began with an argument over the shape of the table. But it ended on some notes of agreement that may offer hope for a ceasefire. Here are the highlights of the *On Common Ground* focus group/roundtable (or was it square?), the sixth in a series that began in late 1997 in Stevens Point.

## **Annexation may be a flawed system, but it's our system.**

Wisconsin's annexation statute can trace its roots to the 1870s but was recast in the 1950s, in an era when post-war suburban growth was encircling Milwaukee. The Legislature passed a law that was intended to protect the ability of cities to grow, creating an imbalance of power that exists to this day.

"From the perspective of the towns, we look at annexation as being totally out of our control," said Rick Stadelman of the



**"From the perspective of the towns, we look at annexation as being totally out of our control."**



**“Rationality is not a part of [annexation]. It shouldn’t surprise us that a non-rational process produces non-rational results.”**

process driven by self-interest on the part of property owners, cities and villages. “Rationality is not a part of it. It shouldn’t surprise us that a non-rational process produces non-rational results.”

**Wisconsin can develop standards to make annexations go better — it just hasn’t done so.**

With some help from the state, local governments could do a better job of laying down standards under which annexation should and should not take place. Those standards may be as simple as setting conditions under which annexation makes sense for all concerned, doing more to establish “urban service areas” that minimize conflict, or taking the step of formally recognizing “urban towns,” which are towns that have already undergone significant development.

“Annexation hasn’t dignified these urban towns in any way to ensure their coherence as communities,” said George Hall, director of the state Department of Administration’s Municipal Boundary Review office.

Wisconsin is almost unique among the 50 states in another way: it gives property owners almost unlimited leeway to shop for the best deal. That may work out well for property owners, but not always for the units of government that lose that tax base.

**It’s time for the state to decide what it wants.**

Wisconsin lawmakers have been entertaining ideas for changing Wisconsin’s annexation standards for years, but nothing much has changed (other than 1992 language allowing “cooperative boundary agreements” between adjacent jurisdictions). Is it a good idea for cities to annex thousands of acres of farmland — or for fragmented towns to continue to exist when they should be absorbed by cities? The courts have occasionally spoken to those issues, but rarely has the Legislature or the executive branch.

Wisconsin Towns Association. “It’s the imbalance of power that is creating the problem.”

Even a spokesman for the cities, Dan Thompson of the League of Municipalities, agreed that annexation is a raw, almost “uncontrolled”

“I don’t think these current statutes contemplated having towns the size of some of our towns today,” said Mike Theo of the Wisconsin Realtors Association. Whether that’s a good policy or a bad one is anyone’s guess - the state has been silent.

**Follow the money — it’s a trail that leads to the border.**

“Annexation has always been about private, economic concerns,” said the League’s Thompson.

Cities want to grow and expand their tax bases, towns want to protect their tax bases and property owners and developers are looking to maximize the value of their investments.

“It’s an issue of money and politics,” agreed Mark O’Connell of the Wisconsin Counties Association. “You can try to wrap it up in nice policy papers, but in the end, it’s about money. The only perceived solution for some people will always be, ‘Did I win?’”

**Is this a war to be won — or a problem to be solved?**

While many local officials feel trapped in a war with no end, some see hope for a negotiated truce. “I believe to my core that we’re in the dawn of a new era here in Wisconsin,” said the Realtor’s Theo, who has tracked progress on other land-use issues in the Legislature.

“More cooperation is being discussed,” especially through boundary agreements, added Stadelman of the Towns Association.

If ways to compensate “losing” parties in annexation wars can be developed, several panel members said, those fights might be shorter or even averted. Consolidation of units of government is another answer: Wisconsin once had 7,000 school districts; now it has about 430.

The 1999-2001 budget debate in the Legislature saw the cities, counties and towns cooperate in unprecedented ways on financial aid issues, so perhaps it’s possible to work together on changing the annexation law. While the cities have everything to lose and little to gain by changing the annexation law, they might be persuaded to make changes in return for other concessions from the towns.

However, no one predicted a quick fix. It could be years — even decades — before the laws are working to everyone’s satisfaction.

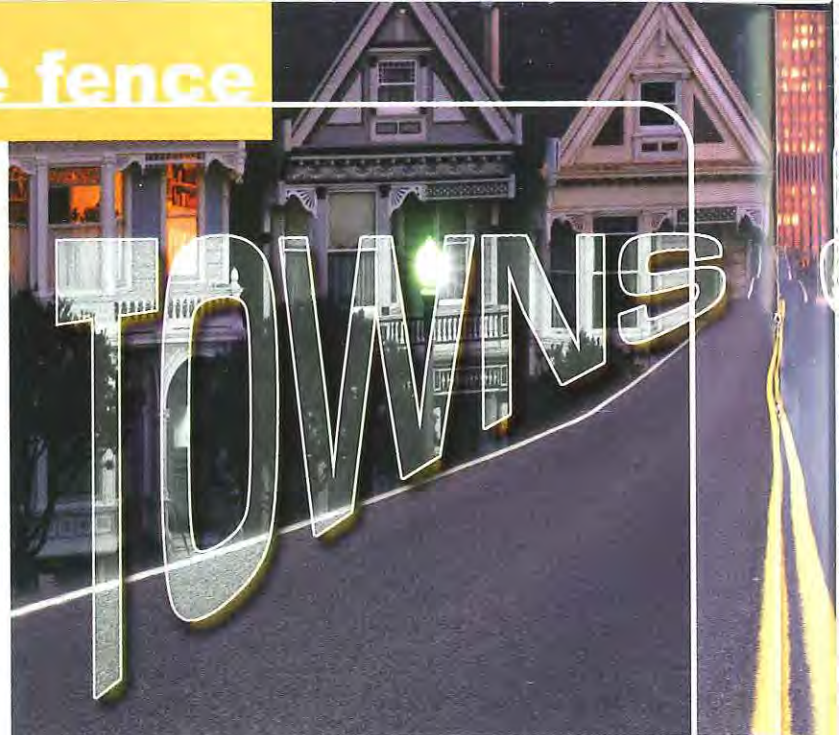
Then again, no one said building a bridge to Kalamazoo would be easy, either.



# FORCED ANNEXATION: BARRIER TO SOUND LAND-USE PLANNING



By **Gerald H. Derr**  
*Chairman, Town of Bristol and  
president, Dane County Towns Association*



**W**hat will Wisconsin be like 10 years from now? Will your hometown be a better or worse place to live? Will our state continue to offer the rich variety of community patterns and lifestyles it boasts today?

The answers to those and similar questions are largely in our own hands. Indeed, I believe that the land-use decisions we make in the next few years will influence all of these issues for many decades to come. The reason is simple: Wisconsin is at a crossroads. Robust economic growth throughout the 1990s has brought unprecedented wealth to our state, but with it has come more urban growth and the gradual erosion of distinct Wisconsin communities. More than the family farm is at risk in rural Wisconsin, a whole lifestyle and heritage could be lost if we fail to act prudently now.

**Forced annexations are not only unfair, they undercut sound land-use planning by punishing towns that stick to their land-use plans.**

Fortunately, this heritage has a strong base of support in Wisconsin's 1265 towns. In many ways, towns operate like cities and villages. They all offer such basic municipal services as road maintenance, fire protection and elections. But towns have an important distinction: they are among the world's last direct democracies. Wisconsin towns still hold annual town meetings (real town meetings) where residents actually vote on issues that matter, including their own town property tax levy. This unique tradition means that towns really can claim to be grassroots governments that not only listen to the people — they are the people.

Townsppeople are protective of their natural environment and their communities (that's why they choose to live in towns). In my capacity as Chairman of the Town of Bristol, President of the Dane County Towns Association and active member of the Wisconsin Towns Association, I meet with town officials and townspeople from all across our state. I find tremendous diversity in Wisconsin's towns, but I also find a consistent determination to protect Wisconsin's outstanding quality of life, while still accommodating reasonable residential, commercial and other growth.

Wisconsin's 1.5 million town residents want to play an active part in shaping Wisconsin's future. They certainly should have this right since much of the new development directly impacts their roads, services and taxes. Yet current Wisconsin laws often prevent towns from having a meaningful voice in land-use matters. For example, consider what often happens when someone proposes a development in a town that is inconsistent with the town's land-use plan. If the town blocks the unwelcome development through zoning or other land-use tools, the developer often annexes the land into an adjoining city or village and gets what he wants anyhow.

This can happen because land in Wisconsin's towns can be annexed into an adjoining city or village over the objections of the town government and residents. Thus, forced annexations often have win-lose outcomes, with towns usually on the losing end.

Forced annexations are not only unfair, they undercut sound land-use planning by punishing towns that stick to their land-use plans. When land is annexed, the town loses both control over how the land will be developed and a part of its tax base. This can reduce the quality of services or increase taxes

**continued on page 22**





# CITIES

## Annexation Isn't The Problem — Land Use Is



By **Edward J. Huck**  
*Executive director,  
Wisconsin Alliance of Cities*

**A**nybody who says annexation is a problem isn't looking at the big picture. Between 1990 and 1995, Wisconsin's population grew by 233,202 people, yet property owners annexed only 62 square miles to the state's cities and villages. If all the state's newcomers lived in that newly annexed territory, they would enjoy a comfortably dense urban setting easily served with sewer and water mains and police and fire protection.

But much of Wisconsin's population growth has been occurring outside urban areas lately, causing traffic jams on the highways and chaos in the financing and provision of urban services to our growing population. Is lack of annexation the problem? More likely, it's only part of the problem.

The population of Wisconsin in 1890 was 1.8 million. By 1990, it was more than 4.8 million. We doubled in population and almost tripled. Until recent decades, we accommodated our burgeoning numbers through orderly urban growth. Cities and villages stopped where the streetcars turned around. People gathered in cities and villages because that's where the factory jobs were, where the state's economic heart pumped blood to neighborhoods and downtowns. Until rural electrification, even the power lines stopped not far outside of town. What made economic sense also made land-use sense.

But by 1990, the world had changed. Factories evolved from multistoried edifices like the old American Motors plant in Kenosha to the horizontal facilities we know today. The way we live and shop evolved too. Corner groceries and neighborhood bakeries went the way of the dinosaur. Shopping malls sprouted like dandelions in the lawn.

Cities grew as well as they could. In 1952, Milwaukee Annexation Director Arthur Werba argued that the city needed to expand by at least 75 square miles "if it is to grow normally in the next few decades." But thanks to shortsighted politicians, that was not to be. And today much of Milwaukee's wealth lies beyond its boundaries.

There is no room in a central city today to build a major factory. There is often no room to build a modern

**In a world where everything made sense, annexation would be the process that keeps our sense of community intact.**

shopping center. Luckily, from the developer's point of view, there is plenty of land surrounding most of our cities to accommodate new growth. Thanks to modern highways, if the land is too expensive on the city's edge, developers can go out a few miles and build there. Good-bye countryside. Civilization, ho!

"Too bad," say some town officials. "Cities, you're out of the growth business. Oh, we'll continue to use your services, especially when we don't have to pay for them. Otherwise, bug off." Gone from the consciousness of these officials is the recognition that the city should be urban and the town should be rural, and everyone should share a common community.

**continued on page 23**



## Derr continued from page 20

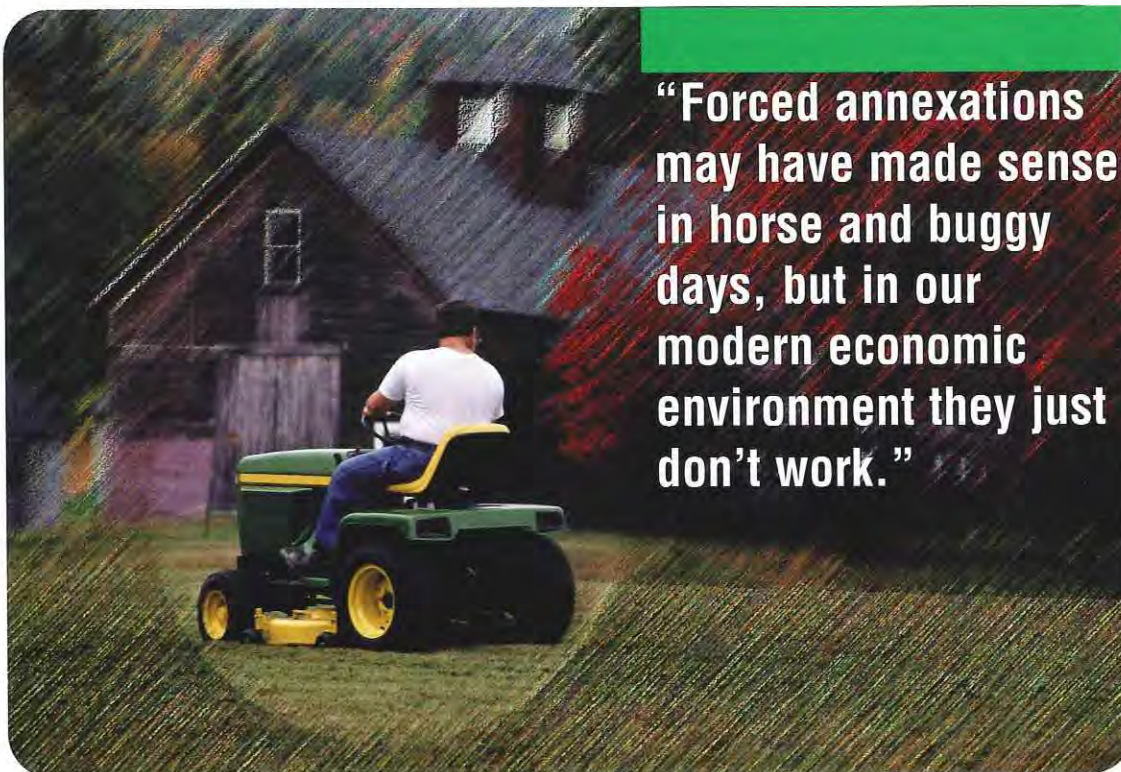
for other town residents. Worse still, it can add fuel to long-standing Hatfield- & McCoy-like feuds among local governments. Towns, cities and villages that should be working together on land use, public service and other matters are often, instead, drawn into bitter turf battles. Forced annexations may have made sense in horse and buggy days, but in our modern economic environment they just don't work. Far from promoting orderly urban growth, they encourage urban sprawl and poison the intergovernmental atmosphere.

I say the time has come to replace forced annexation with a system that encourages win-win outcomes. All of us have an equal stake in the future of our state, so all of us should have an equal voice in shaping that future. Replacing forced annexation with a law requiring mutual boundary agreements would be a major step toward both fairness and more effective land-use planning. In addition to paving the way for improved cooperation on land-use matters, this reform would give cities and villages a greater incentive to redevelop abandoned or under-utilized lands, thereby reducing the pressure to annex and develop farmland. Towns and townspeople would gain more

control over their own communities. An added benefit is that predictable boundaries would allow more orderly (and efficient) development of public services and facilities for everyone.

Many people use flowery rhetoric to describe their land-use vision. Mine is much more down-to-earth. Like many other town residents and officials I talk to, I simply want to protect and enhance the quality of life I inherited from earlier generations. I know that many city and village residents share this dream. I want to work with them, but before I can be a full partner in this effort Wisconsin's antiquated annexation statutes must be reformed. Other changes (including a complete overhaul of our Byzantine zoning system) are also badly needed. But the best way to improve land-use planning and intergovernmental relations in Wisconsin quickly is to replace forced annexation with cooperative boundary agreements.

Our state is at a crossroads. Let's take the road that leads to stronger communities and better land-use planning — but let's walk that road together as equal partners.





## Huck continued from page 21

In a world where everything made sense, annexation would be the process that keeps our sense of community intact. It would be the process that determines whether development occurs, not who divides the spoils. Of course, this isn't a world where everything makes sense. And lack of resolve over sensible land use leaves us quarreling over who should get the spoils.

Sensible annexation law is only one of the tools we must forge to restore a sense of shared community. Creating these tools is essential as we approach the 21st century. Along with our sense of family and community, a common-sense approach to development is one of the most important legacies we can pass on to our children.

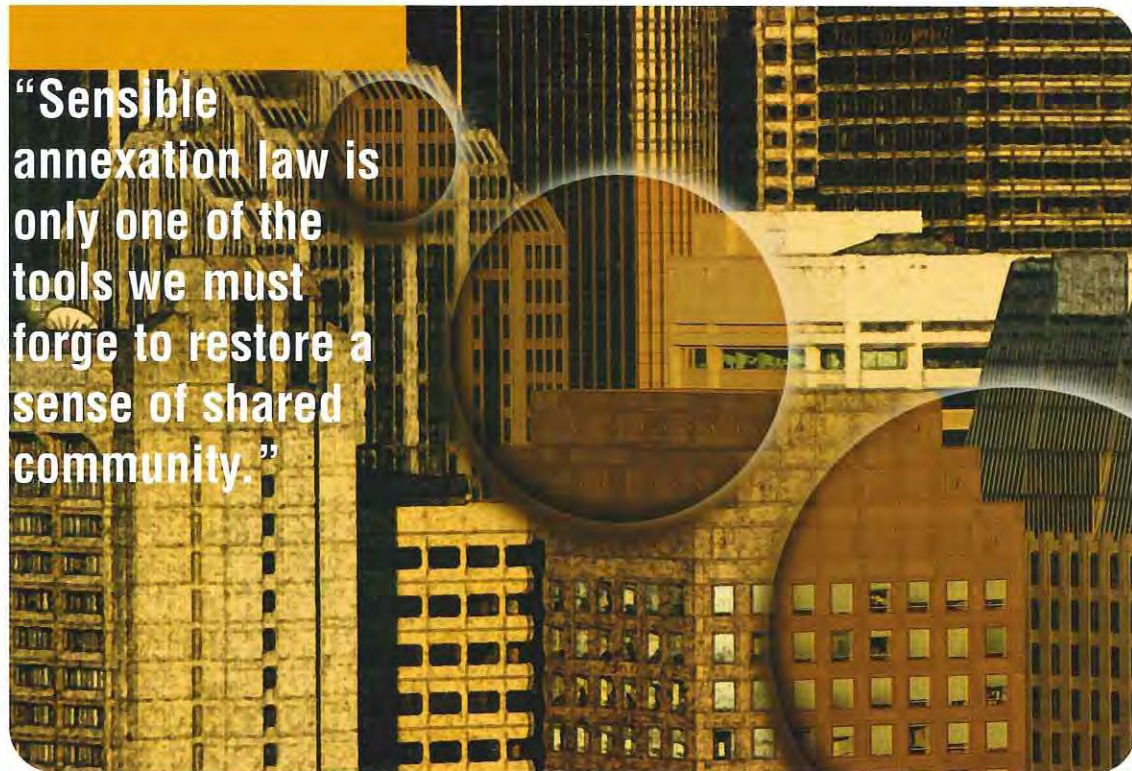
The discussion of common-sense development policy must also be about service delivery, tax base and sustainability. In Wisconsin, we've traditionally had state-shared revenue to finance urban redevelopment from the wealth that we've lost due to a lack of wise development

policy. To remain sustainable in the present scheme of things, cities and villages must again turn to annexation.

There is an alternative that can also promote sustainability, however.

It's been in effect in Minnesota for almost 30 years. It's called tax-base sharing. It recognizes that more than just a single community but a whole region contributes to quality of life. In Wisconsin, it could work this way: each community in a region would contribute between one-third and one-half of growth of commercial, industrial — and perhaps residential — tax base to a regional pool. Each community would benefit from the region's growth.

And just maybe parochialism would decline across Wisconsin and the Berlin Wall attitude that some people have toward their neighbors would thaw a little bit as folks realize that we're all in this together.



**“Sensible annexation law is only one of the tools we must forge to restore a sense of shared community.”**





**By Mark Rogacki**  
*Executive director,  
Wisconsin Counties Association*

## COUNTY GOVERNMENT OPTIONS AND REQUIREMENTS IN LAND USE

The quality of life for future generations will be determined by today's land-use decisions. These decisions are based upon economic, demographic, agricultural and social trends. Although planning and zoning are currently voluntary land-use planning tools, high growth rates have increased pressure on all levels of government for better land-use planning. Counties are in the unique position of trying to coordinate land-use goals, policies and regulations with the towns, cities and villages within their borders as well as surrounding counties. It is for this reason that county governments are currently engaged in a wide variety of land-use activities that are either options given to counties to plan for their particular land-use needs or are statutorily required.



### OPTIONAL LAND-USE ACTIVITIES AND REGULATIONS

Authority to plan and enforce land-use regulations is granted to counties mainly in chapter 59.69 of the Wisconsin Statutes. In this section, counties are given the power to create planning and zoning committees as county board agencies or planning and zoning commissions to act in all matters pertaining to county planning and zoning. Also important to an effective land-use program is the county zoning administrator whose duties include processing permit applications, receiving appeals and applications for conditional uses and variances and providing information for the public and permit applicants. These committees, agencies or departments are responsible for the creation and implementation of the county land-use activities listed below.

#### DEVELOPMENT PLAN

State statutes direct the county zoning agency to prepare a county development plan or parts thereof for the physical

development of the unincorporated territory within the county and areas within incorporated jurisdictions whose governing bodies by resolution agree to have their areas included in the county's development plan. County zoning agencies are required to include the location of any airport or area affected by an airport within the development plan. The development plan must also include, verbatim, municipal master plans and official maps. Counties are not statutorily required to recognize town plans when preparing county development plans.

In addition to county development plans, counties with limited resources or more complex land-use issues enter into contracts with regional planning commissions for help in developing their plans or developing community facilities, public improvements and other land-use related developments.

#### COUNTY ZONING ORDINANCES

One of the most important powers or tools that counties have to implement and enforce land-use planning activities is the ability to zone. Under Wisconsin Statutes, county boards may, by ordinance, establish and regulate districts within the county outside of incorporated areas to promote public health, safety and general welfare. County zoning ordinances remain in effect in areas that are annexed into a city or village until that governing body changes the regulation by official action. The county has somewhat extended authority over towns; however, county zoning ordinances are not effective until they have been approved by the town board. Any zoning ordinance adopted by a town supercedes prior town ordinances. Approximately 705 towns have adopted their county's zoning ordinances. A county may zone and rezone lands owned by the county without securing approval by the town in which the areas lay, provided notice of intent is given to affected towns and a public hearing is held on the proposed zoning.



## **SUBDIVISION/PLATTING PLANS**

County planning agencies are authorized under s. 236.46, Wis Stats., to develop plans and ordinances for future platting of areas within the county, or for the future location of streets, highways or parkways, and the extension or widening of existing streets or highways. Counties may adopt or deny subdivision or platting plans without the approval of affected towns.

## **COUNTY AGRICULTURAL PRESERVATION PLAN**

As part of the Wisconsin Farmland Preservation Program, counties are also granted the power to prepare and adopt agricultural preservation plans. The desire to save farmland from development started the first efforts to do long term land-use planning and the use of zoning to exercise land-use control. Agricultural preservation plans or exclusive agricultural zoning are now required to enable farmland owners to receive tax credits. The agricultural preservation plans are meant to be a component of the county development plan. Seventy of Wisconsin's 72 counties have certified agricultural preservation plans. There are approximately 32 counties that have exclusive agricultural zoning ordinances and 272 towns that have adopted their county's agricultural zoning ordinances.

## **COUNTY SOLID WASTE MANAGEMENT PLANS**

County solid waste management boards are authorized to develop plans for a solid waste management system. These plans must be consistent with state administrative codes and are reviewed by the Department of Natural Resources (DNR). The DNR also has final approval for the location and design of hazardous waste facilities and landfills.

## **COUNTY CONTROLLED-ACCESS HIGHWAYS**

Under s. 83.027, Wis Stats., a county board, with the consent of the town, village or city governing body in the affected area, may designate a portion of the county trunk highway system that meets statutory criteria as a controlled-access highway. Controlled-access highways are those in which the entrance and departure from that street or highway are regulated for the welfare and safety of the public. On controlled-access highways, no street, highway, or private entrance may be connected without the previous consent of the county board. Abutting landowners have no right or easement of access.

## **HISTORIC PRESERVATION ORDINANCES**

Counties are authorized to enact ordinances to regulate objects, places, structures and districts with special character, historic interest, aesthetic interest or other significant value to preserve them.

## **DEVELOPMENT IMPACT FEES**

Previously under s. 66.55, Wis Stats., counties, along with cities, villages and towns were allowed to impose development impact fees. These fees could be used to offset the costs to counties of providing services, infrastructure

development and maintenance required as a direct result of development. However, as of the last legislative session, counties are no longer authorized to recover these costs through impact fees.

## **REQUIRED LAND-USE ACTIVITIES AND REGULATIONS**

### **COUNTY PARK SURVEYS/PLANS**

Under chapter 27 of the Wisconsin Statutes, all counties with a population of at least 150,000 must appoint a county park commission. County park commissions are required to make studies of their counties with reference to reserving, acquiring and improving lands for parks, playgrounds, forest reservations, parkways and boulevards. All reports must give consideration to the health and general welfare of the citizens of the county, as well as to the environmental protection of natural resources.

### **COUNTY RURAL PLANNING**

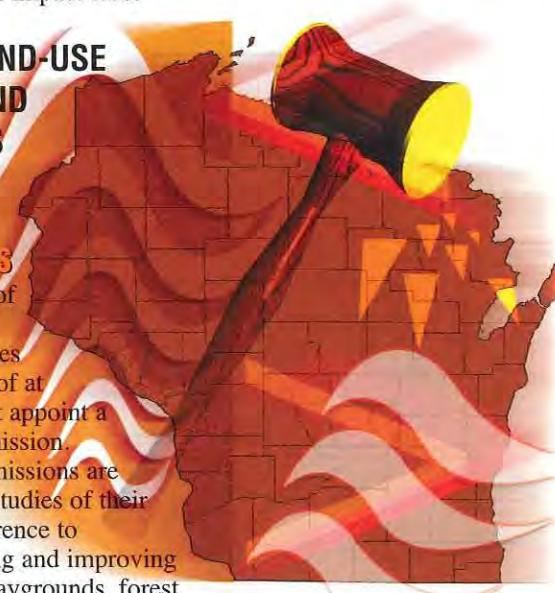
Any county that does not have a county park board or commission (created under s. 27.02, Wis Stats.) must have a rural planning committee to plan for health and general welfare; the best possible transportation facilities; the most logical community centers; county parks; recreation fields; county fairgrounds; community woodlands; places of local and historical interest; and preservation of waterfront land for public uses, scenic outlooks and preservation of native landscapes.

### **COUNTY FOREST MASTER PLANS**

Under s. 28.11, Wis Stats., all counties with land entered under chapter 77 and all county lands designated as county forests by the county board or forestry committee and are entered under the county forest law shall create a comprehensive county forest land-use plan for a 10-year period. The county forestry committee creates this plan with technical assistance from the DNR and other interested agencies. Approximately 28 northern Wisconsin counties have prepared or are in the process of preparing comprehensive county forest land-use master plans.

### **COUNTY EROSION CONTROL AND STORMWATER MANAGEMENT PLANS AND ORDINANCES**

Under s. 92.10, Wis Stats., those counties that are designated as priority counties by the Department of Agriculture, Trade and Consumer Protection (DATCP) must prepare and adopt





erosion control plans. The county land conservation committee prepares plans to conserve long-term soil productivity, protect the quality of related natural resources, enhance water quality and focus on severe soil erosion problems. The committee also identifies land-use changes or management practices that would bring areas into compliance with the standards adopted by the committee. Almost all of Wisconsin's counties have erosion control plans. Counties are granted authority to enact ordinances to control construction site erosion at sites in unincorporated areas if the sites are not for construction of buildings or storm water management.

## COUNTY SHORELAND AND WETLAND MANAGEMENT ZONING ORDINANCES

Under s. 59.69, Wis. Stats., each county is permitted to zone by ordinance all shorelands in its unincorporated areas. All shoreland zoning ordinances supercede any other county zoning ordinances enacted under 59.69. Town approval is not required. Shorelands include areas within 1,000 feet of a lake or 300 feet of a navigable stream. Shoreland zoning ordinances may be more restrictive than minimum state standards, but not less restrictive. Counties may permit only certain uses in wetlands of five acres or more within the shoreland zone.

## FLOODPLAIN ZONING ORDINANCES

Counties, cities and villages are required under s. 87.30, Wis Stats., and NR 116, Wis Adm. Code, to adopt reasonable and effective floodplain zoning ordinances within one year after hydraulic and engineering data adequate to formulate the ordinance becomes available. Approximately 68 counties have adopted floodplain ordinances.

## PRIVATE SEPTIC SYSTEM PROGRAM

The Department of Commerce and counties, under ss. 145.20 and 145.13, Wis. Stats., administer codes regulating the design, installation and operation of private sewage or septic systems. Counties are authorized to designate areas where holding tanks are prohibited. Currently the private septic code, referred to as COMM 83, is under major revisions by the Department of Commerce. The proposed revisions change the rules from a prescriptive-based code to a performance-based code. These changes will allow for a

more liberal approval of new technologies and septic components. As primary agents of the state for the enforcement of the private septic code, counties continue to have concerns over the possible environmental impact of these new technologies on the state's water quality. In addition, counties are concerned over the capability of county staff to monitor these new systems and enforce the more complicated maintenance that these new systems will require.

## NONMETALLIC MINE RECLAMATION

Wisconsin Act 464, 1993, directed the DNR to promulgate rules to establish statewide uniform nonmetallic mining reclamation standards for existing and new mining sites. Nonmetallic mining is the extraction of stone, talc, gravel, sand and other earthen materials. Although many counties voluntarily enacted such reclamation standards within their ordinances previously, some areas of the state have abandoned sites that have not been left in acceptable condition due to a lack of stringent enforcement standards. The new reclamation rules, which are in the process of being approved, will require each county to adopt a model ordinance for the regulation and enforcement of nonmetallic mining reclamation procedures for sites within the county's jurisdiction.

## NONPOINT SOURCE WATER POLLUTION ABATEMENT

Each county is statutorily required to form a county Land Conservation Committee (LCC) which must consist of county board members that sit on the agriculture and extension education committees and the Farm Services Agency Committee. LCCs set the county policy on land and water conservation measures and oversee the activities of the county land and water conservation department staff. Together, the LCC and the Land Conservation Department (LCD) implement local programs, state land and water conservation programs, as well as other state and federal programs such as the nonpoint program, forestry, stormwater management, lakes management, animal waste regulations, wildlife damage abatement program, dam maintenance program, tree planting programs, sustainable agriculture, assistance to county zoning projects and inland lakes projects.

Land-use issues are and will continue to be the most contentious issues addressed by the Legislature. Counties, like all units of government, must try to protect the land and the environment while at the same time balance the private property rights of the public. Although the divisions of power between local units of government can be statutorily defined, land-use issues will continue to cross local boundaries. Therefore, if we are truly going to achieve a system of more managed growth within Wisconsin, all stakeholders must work cooperatively to ensure our future generations enjoy a high quality of life.



# CAPITOL WATCH

## MY, HOW THINGS HAVE CHANGED AT THE CAPITOL

By Dick Wheeler



The “hostile take-overs” of land of yesterday could become the “friendly mergers” of the future when the 1999-2001 budget bill passes later this summer.

If anyone had suggested a few years ago that local government officials, developers and environmentalists would be working together to get lawmakers to pass a program planning for multi-unit land use, they would have been laughed out of the building.

It’s an especially interesting turn of events for someone who watched:

- the war between cities and towns in the mid-70s, when “town islands” were being created by annexations;
- former Speaker Tom Loftus held up Assembly action on a Tax Incremental Financing bill for days because the percolation tests in his suburban Madison district made it look like a mine field in Vietnam;
- lobbyists for the Town of Pewaukee and City of Waukesha vowed a fight to the death over the town land abutting the city; or
- the incubation of a proposal by ABS Global to turn hundreds of acres of rural Dane County into Experimental Prototype Community of Tomorrow (EPCOT to those who have visited Disneyworld).

The angel of peace is a program of local planning agreed to by virtually anyone with a position on the future of Wisconsin cities, villages, towns and counties.

“Smart Growth” was inserted into the budget bill by Sen. Brian Burke (D-Milwaukee), the committee’s Senate co-chair. It has the uninspiring title of “comprehensive planning grants program” in the Legislative Fiscal Bureau analysis of the \$41 billion spending plan. At this writing, it was not clear whether some version of comprehensive planning “Smart Growth” would be in the final version of the budget. Despite this political uncertainty, the issue of “Smart Growth” appears to have brought together a broad-based coalition of affected stakeholders that will insure the issue will remain before the state legislature for years to come.

But it is really the follow up to that item that gets most of the attention. That’s the item entitled “Smart Growth Dividend Aid Program.”

In most conversations it would be called “the carrot.” In reality, it is the elixir of local government ... money.

Basically, the “Smart Growth” program encourages all sides of the local development argument to sit down and work out their problems for future activities, including promotion of redevelopment of lands within existing infrastructure; neighborhood designs supporting a range of transportation; protection of natural areas and economically productive areas; encouragement of land uses; preservation of cultural, historic and archaeological sites; and building of community identity.

And if that mountain can be climbed; at the top, there is a pot of gold waiting for the successful: money that would come from the state in the form of aids to localities beginning in 2005-06.

It’s probably too late to avoid a court battle between the City of DeForest and Town of Windsor in northern Dane County, where the city has annexed hundreds of acres of the town so ABS Global can build a village, effectively ignoring a previous agreement with the town.

But it’s movement toward a common goal, including nearly everyone involved in growth and conservation, which usually comes down to which governmental unit is going to control the land and collect the money from its owners.

Another name for it is annexation, which has been a legislative problem for decades.

As Rep. Carol Owens (R-Oshkosh) notes, “Some annexations are for the better and some are not. In most cases, it is a way of improving the tax base of one municipality at the expense of another. If a town develops an area, the city just annexes.”

She cites the example in her district of a developer petitioning for annexation a farm of about two hundred acres, less the farm buildings, leaving the farmer without a vote. She calls it an example of “bad annexation” and says something needs to be done.

Adds Sen. Burke, “The impact of ‘Smart Growth’ on annexations will be indirect, but to the extent it encourages communities to pursue similar goals, it could help ease growing pains and reduce tensions between neighboring communities.

“Annexations may be needed less often under ‘Smart Growth.’ At the very least, they should become less divisive.”





# SURVEYING THE LAND

## ANNEXATION: CHANGING NEEDS AND OPPORTUNITIES FOR CHANGE



**By William F. White**  
*Senior partner, Michael Best and Friedrich*

In the early 19th century, Wisconsin was a rural landscape dotted by farm plots, forests, trappers and occasional houses. Those living in this rural setting needed little from their township governments; primarily roads to bring farm product to market and schools in order to educate farm families as part of the American dream.

Gradually, however, clusters of population sprang up. Traditionally, these crossroad communities offered commercial and social amenities, like a post office, a retail store, a church, a tavern and perhaps a school, all surrounded by clusters of houses. As they grew, these developing urban centers had different needs, desires and political destinies due in part to public health imperatives and commercial needs.

In recognition of these needs, the developing urban centers were, under Wisconsin Statutes, allowed to “incorporate” as villages or cities. Village or city status brought with it unique powers and responsibilities related to the challenges associated with the emerging population concentrations. For example, the Legislature permitted villages and cities to provide sewer and water systems to their citizens, engage in planning and zoning functions, exercise land division and zoning outside their borders in the townships and, above all, to grow in size.

Villages and cities grow by annexing land, a right that is denied to towns. Interestingly, however, villages and cities cannot initiate the annexation process. Annexation can only take place when a property owner petitions to change the jurisdiction of his or her land from a township to a village or city. The petition itself has to be accepted on an “all or

nothing” basis by the village or city. The village or city cannot coerce or unfairly induce the filing of the petition. Consequently, since the timing of the petition is totally within the control of the property owner, villages, cities and towns cannot plan for annexation.

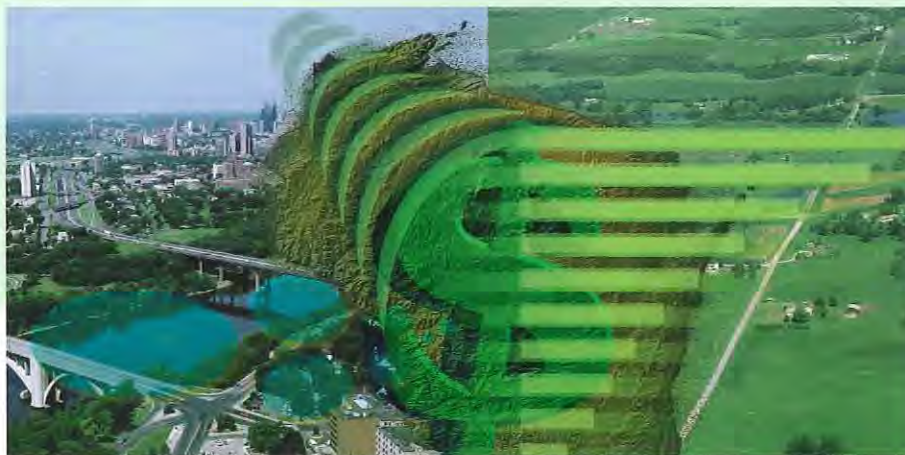
Over the last 50 years since the post World War II baby boom and flight from the cities, Wisconsinites have moved out of the cities and into the suburbs. Where concentrations of population have occurred in the townships, the townships have taken advantage of incorporation statutes and have

sought to become villages and cities in their own right, even though they may be dependent in a very real economic and social sense on a nearby village or city. Similarly, the villages and cities have annexed almost all property they could. This accelerated pace of incorporation and competing annexations has created a vast body of judicial case law where the “losing” townships have sued repeatedly to stem the tide of annexations of their lands.

**The accelerated pace of incorporation and competing annexations has created a vast body of judicial case law where the “losing” townships have sued repeatedly to stem the tide of annexations of their land.**

These legal battles have been costly both in terms of their impact on responsible planning and on governmental coffers. The uncertain timeframe for the annexation petition process, for example, prohibits cities, villages and townships from effectively planning for growth in areas near the periphery of cities and towns. In addition, the “all or nothing” requirement for annexation makes it impossible for annexing municipalities to schedule construction of municipal services within reasonable timeframes, thereby hampering the economic development of the area and frustrating the proper configurations of utility infrastructure. The astronomical litigation costs for attorneys, planners and engineers who participate in the court process places a





heavy demand on often scarce municipal resources. Less tangible, but nonetheless real, is the psychological damage done to the relationships between townships and their adjacent villages and cities by the hostility that often results from the unilateral and unexpected nature of annexation.

At the moment, a number of townships and their adjacent cities and villages are exploring a more holistic approach to municipal growth. These townships have concluded that their vitality and economic health is dependent and integrally intertwined with the economic health of adjacent villages and cities. To that extent, they have accepted the desire of villages and cities to grow in reasonable and predictable fashions. Similarly, some villages and cities have concluded that they cannot expand in a geometric fashion at their periphery without increasing the cost of their municipal services. The diversion of increasingly scarce municipal resources from the center of a city to its periphery creates, they believe, an economic and political imbalance and inhibits a village or city from maintaining its infrastructure and stopping social decay at its core.

Those municipalities who believe they share a common destiny with the towns and villages in their immediate areas, are negotiating agreements which include some interesting new opportunities, including, for example:

1. Entering into agreements for municipal growth areas beyond which cities or villages will commit not to annex and where townships, for their side, will agree not to contest annexations within the growth areas.
2. In exchange for growth areas, cities and villages have agreed to extend municipal sewer and water services beyond their borders into the townships. This allows the development of stable neighborhoods or commercial developments within townships. In some cases, the townships have agreed to transfer jurisdiction over these developed neighborhoods or

commercial areas after a period of 10, 20, 30 years or longer, through the use of a cooperative plan under Wis. Stat. 66.023.

3. Cities and Villages have agreed not to use or exercise extraterritorial zoning or extraterritorial plat review authorities so long as the township adheres to agreed upon master plans for its development.
4. Townships and cities and villages have agreed to revenue sharing whereby revenues may be transferred either from the township to the village and city, or vice versa, in exchange for other considerations. This could allow suburban funding of regional transportation systems or other regional amenities such as zoos and parks. On the flip side, revenue sharing to townships makes up for the lost tax base that results from annexation.
5. Joint commissions between townships and villages and cities, governing police, fire, emergency management services, zoning, regional planning and regional sewer and water systems have also been created.
6. Cities and villages have agreed not to contest incorporation of certain township areas where other agreements are made in advance of the incorporation.

Combinations of these “tools” are beginning to eliminate the “win-lose” and inefficient annexation dynamic. The current statutory tools for implementing cooperative growth are relatively weak and untested, but entrepreneurial municipalities realizing common destiny have successfully used one or more of these options to achieve goals that appear to be both tax- and cost-effective and foster a political spirit of cooperation. Recent legislative initiative will do much to bolster this newly found spirit of cooperation.



## "HALLIE" CONTINUED FROM PAGE 11

Norrell agreed with Nielsen, adding that most people would rather live in a town like Hallie and pay cheaper taxes, "if they don't need municipal services."

"In Chippewa Falls, we are not going out and asking people in Hallie to annex here," Gordon said. The annexation is accepted "if it fits with our overall plan and development. We don't actually go out and file the petition for the landowner."

That doesn't quite wash, Gibbs countered. "While they may say that, they will do what's best for Chippewa Falls' and Eau Claire's financial interests. Lee Markquart has a nice bit of property to collect taxes on."

A number of the people involved in the annexation-incorporation tussles involving Hallie gathered recently at a restaurant on the Hallie-Chippewa Falls border. For many of the people, it was the first time they had met and had a serious discussion about this important and frustrating issue.

A large part of the discussion, organized by the On Common Ground Foundation, involved what could be done to stem the tide of expensive lawsuits and other court proceedings that surround this annexation issue. While a number of ideas were bandied about, no clear-cut alternative to legal action emerged to give the participants hope that the legal free-for-all would subside.

Fischer, the Eau Claire city attorney who has argued about Hallie annexations before the U.S. Supreme Court, said the Legislature should fine-tune the annexation laws, which are complex and give towns a number of technical platforms on which to sue. These changes could make the annexation laws "more realistic" he added.

Hallie supporters like a bill pending in the Legislature that would create a "charter town" provision, protecting a limited number of towns from losing land through annexations. Hallie apparently would qualify as a charter town.


The only towns eligible would be those that are relatively urban in nature, Andersen said. "It makes sense," he said of the proposed protections in the charter-town legislation.

"I don't think town government was created to provide municipal government," Norrell replied. Other officials said the bill would eliminate the right of residents in a charter town, such as Markquart, to ask a city to annex their property.

So it appears that in the Chippewa Valley, annexation disputes between Eau Claire and Chippewa Falls on one side and Hallie on the other will continue to be decided by judges.

"Get a good attorney and use him often," Andersen replied, not entirely facetiously, when asked for his view on the future of annexation disputes involving Town of Hallie land. "I no longer feel dialogue is a cure-all."

"The only people who make out any good on this are the lawyers," Oestreich said.

"I just see more of the same, quite frankly," Fischer said of the annexation lawsuits he has litigated over his many years at Eau Claire City Hall. 

## "DELAFIELD" CONTINUED FROM PAGE 13

Kanter knew, however, that litigation was only a measure of last resort. As his talks with Lamerand progressed, he grew more optimistic that an agreement could be reached.

"Once the city was petitioned, however, the game changed," Kanter said. "But through it all, I always believed we would eventually get an agreement."


Kanter says the effort for a surrounding border agreement will continue, now that virtually all the borders north of I-94 is secure.

"Our efforts will continue," Kanter said. "My goal is to get a border agreement with all municipalities that surround the town."

Another benefit of the agreement is the precedent it sets for future negotiations, Kanter said.

"We have demonstrated that we're not only serious about border agreements, but we're also willing to compromise, participate in the give and take nature of negotiations and cooperate with our neighbors," Kanter said. "I believe we'll have the job completed in two years."

That's a tall order, but Kanter has a track record that supports his prediction.

Keep an eye out in the Dairy Queen. If a couple of local officials are sitting around drawing maps on napkins, another agreement may be at hand. 



**"CAMPBELL" CONTINUED FROM PAGE 15**

It is being touted as a new approach to intergovernmental relations, but not all La Crosse Common Council members believe it's good for the city. Opposition council members have an ally in former Mayor Patrick Zielke, who served for 22 years before retiring in 1997. Zielke argues that the agreement hurts the city's opportunities for growth.

"Our people have paid for these things," he said a couple times in the focus group, referring to the infrastructure for city services such as water. "And now to give them up to someone else to use and to only pay the service charge and the hookup charge ... that's a lot less than increasing your taxes."

Later, he expressed his view in more folksy terms: "If you're going to pasture with a horse, you'd better put a fence around it."

Like all Wisconsin towns, Campbell originally contained 36 square miles. Over the years, a large part of it was spun off to form the neighboring town of Medary. Pieces were annexed by the neighboring cities of La Crosse and Onalaska. In addition, dams submerged some of the town's original property under Lake Onalaska. When Campbell made its most recent attempt to incorporate as a village, it contained barely four square miles, the minimum required to incorporate.

Today, Campbell is composed of two islands — the larger French Island between the Mississippi River and the Black River, and Hiawatha Island, which lies in the Black River west of the north side of La Crosse. The city's most recent annexations of town properties have been mainly on Hiawatha, where almost half the homes have come into the city to obtain city water. In addition, the city has annexed an odd-shaped chunk of land that includes a trailer court owned by local developer Jack Edwards, who wants city water to develop more of the property.

Campbell began trying to incorporate in the 1960s. Voters turned down that attempt, and the state denied subsequent attempts in 1972 and 1975, saying the town failed to meet the criteria for a village. The town filed again to incorporate

in 1996, after voters gave the go-ahead in a November 1996 advisory referendum.

The city is challenging Campbell's incorporation, and Campbell is challenging the city's annexations and the Wisconsin Public Service Commission's order allowing La Crosse to install water mains on Hiawatha Island.

Meanwhile, the city has extended water pipes across the Black River and is providing water to the properties on Hiawatha that have annexed to the city.

Campbell wants an agreement with La Crosse to keep the city from challenging its incorporation and to obtain city water. Campbell residents want independence, Kapanke said. "Doesn't the will of the residents stand for something?" he asked. "We talk like a township's out here to be had by a city or village. By and large, town taxes are cheaper — the services aren't to the extent that cities offer, but town residents are satisfied by and large with those services ..."

City supporters of the agreement say it's also good for the city and will bring in about \$22 million of taxable property, plus additional water utility customers.

Mayor Medinger and Chairman Kapanke both believe that an out-of-court settlement is better for their respective municipalities and the entire region than what could perhaps turn into years of litigation.

"We are now at a fork in the road," Kapanke told the council before one of its votes. "If we go the right way, I think La Crosse, Campbell and the Coulee Region will all be winners . . . . We should be working together rather than spending time on litigation."

"If our negotiations break off, if this agreement breaks off for whatever reason, and Campbell goes to court and we fight it out and Campbell comes out on top, it will be very bittersweet for me because I will know in my heart that it was not the right way to do it," he said during the focus group. "The right way to do it is to sit down at the table as we've done and come to an agreement. That is the right



way, not the court battles where we're spending our taxpayers' money that should go somewhere else."

The negotiating teams consisted of Medinger, Kapanke, La Crosse Common Council President Bernard Maney, Town Board Member Rodney Schellpfeffer, attorneys for both municipalities, and several La Crosse city department heads. This year, two more council members were added.

State Director of Municipal Boundary Review George Hall, who has come to La Crosse numerous times to work with the negotiating teams, has called the La Crosse/Campbell agreement "easily the most complicated intergovernmental agreement I have worked on," and "an agreement of high standards."

The 18-member La Crosse Common Council approved an "outline agreement" on January 25 on a 12-3 vote, with three members absent. The Campbell Town Board approved that outline on March 17.

But the deal began to unravel even before the council's January vote. Last December 9, the council directed Medinger to go back to the table and negotiate changes that would make the agreement more advantageous for La Crosse. He and Kapanke said they were willing to discuss changes, but Kapanke warned there could not be any major changes that would jeopardize Campbell. The Campbell board also decided to prepare plans to build its own water system, and threatened to move ahead with its court challenges of La Crosse's annexations.

By March, La Crosse council members who opposed the agreement began to show their muscle. "There are some shifting sands," Medinger admitted. Among those shifting to the opponents' side was Council President Maney, who sat in on most of the negotiating sessions, but was conspicuously silent after the sessions.

Some of the Hiawatha residents who annexed into La Crosse were angry because their neighbors may get city water without annexing and paying the city's higher taxes, he said to explain his ambivalence. By May, Maney was voting consistently against the agreement.

The Campbell Town Board remains committed to the agreement. But it sought and obtained an "interim agreement" to give the town some assurance while the two communities work through the state's long-form boundary process. And town board members are getting testy.

"We're afraid they are using the (state law regarding public input process) to shoot us down later," said Schellpfeffer.

"We're saying shoot now and avoid later. The council members who are against it are gaining momentum. There is no assurance that they aren't going to derail this thing."

"You think they are going to be nice to us?" asked Campbell Town Board Member Robert Crooks, contending that the council had not treated other people doing business with the city well. "They do not have any friends. The old guard is still there."

The Greater La Crosse Area Chamber of Commerce and some business leaders want to see more cooperation among communities and keep urging the council to stick with the agreement.

"I think the issue is the future of the Coulee Region," said Merl Case, chairman of the government committee of a pro-collaboration group called United Coulee Region.

"I think we're on the threshold of a policy where our municipalities can agree with one another to provide services at fair prices, and do it in other ways besides taxation, annexation ... I think we have worked out an agreement here that is the beginning of that sort of future for this area. If we can continue to do that, we'll have a future. If we can't, we won't."

Council members listen politely, but the remarks do not seem to sway them. On May 11, a resolution to rescind the January 25 agreement survived by a gossamer 10-8 vote during a special meeting of the council. Two days later, at the end of a regular meeting, opponents moved to reconsider so an opponent, who said she was confused on the vote, could switch to their side. Her switch produced a tie vote, leaving Medinger to break the tie to keep the deal alive.



Barring any more moves by the opponents, the agreement now will go through the state's long version for boundary agreements which requires a public hearing, and enables residents to petition for an advisory referendum or to require a "super majority" three-fourths vote of the council.

The agreement appears doomed if residents petition for the super majority vote because it would take only five members to kill it. Or as Council Member Doug Farmer, who has opposed the agreement since the first vote, said, the two original opponents still on the council will need only three members to join their ranks.

Medinger has asked for an advisory referendum before the council votes, in hopes that residents will support the agreement and that three-quarters of the council will then follow suit.

The La Crosse/Campbell agreement has gotten into rough water for three main reasons. First, some members of the council oppose selling any service without requiring a property owner to annex into the city and pay city taxes.

Councilman Gerald Every, who has relatives in Campbell said he recalls Christmas gatherings where the Campbell relatives would wave their tax bills in the faces of the La Crosse residents and say, "ha, ha, ha."

"That was all fun and games, but now when there's a need there, they want to have some planning done," he said.

"They want to have some negotiating done. We now know what Campbell wants. They know what we want. We went through a hell of a process to find that out. I think we should have gone to the table and said annexation is it, that's all there is, and then went from there."

In a letter to the editor in the *La Crosse Tribune*, former Mayor Zielke said "To understand why annexation is so important to us, look at the demographics and the makeup of our city. How long can we afford to carry the load? You need to start being concerned about the homeowners and the middle class, the working people and the retired. They helped build this city. By freezing our borders, will we be forced to cannibalize what exists if we are to keep a healthy economy?"

Zielke led the city during its long, bitter annexation battle with Onalaska, a fast-growing suburb directly north of the city. "If we had not dug in our heels, we wouldn't have the size of the City of La Crosse, with annexation and a strong position saying no water or sewer without annexation" he said. "We wouldn't be going toward the Ten Mile House with annexation. Morman Coulee is the only place we've got to go."

Morman Coulee is the area southeast of La Crosse off Hwy. 14/61 toward Madison. The city is currently negotiating with one of the longtime farm families there who wants to annex into the city to obtain water and sewer to serve the housing the family wants to develop.

The opponents of selling services without annexation say they believe Shelby, a town southeast of La Crosse, is watching the Campbell scenario with keen interest. The area south of the city is the only place La Crosse, locked between the Mississippi River and bluffs on the east, can expand. Shelby contains a great deal of undeveloped property, in addition to new homes and older subdivisions, some of which are beginning to have failing septic systems. At a time when that area is ripe for annexation, opponents of the Campbell deal say it will set a bad precedent to sell a city service without annexation.

The result will lock in the city, they say. "As soon as Shelby hears about how this thing came about . . . Shelby will then close the door and we will sit there forever, with the hospitals and the schools and the rest of the growth, all nontaxable. We hear them talk about sharing our services, but we never hear them talk about sharing our taxes."

Supporters of the agreement argue that Campbell is different from the Morman Coulee area because Campbell has the ability to develop its own water system. Apples to oranges, Medinger said. "The policy in the town of Shelby (where Morman Coulee is located) . . . they know the city's coming. The state is building a four-lane road out there. They know we're coming. The Millstream Addition has got poor water, and the deal ain't going to be the same. We're already halfway out there. We're going to annex another property . . . and we're coming. It's all going to be City of La Crosse all



the way out to Ten Mile Hill in the next four or five years. That's a different situation."

Campbell leaders have used the fact that they have preliminary plans and cost estimates to build their own water system. "We have the capability, we have the borrowing power, the bond power, to put in our own water system," Kapanke said. "If you look at the monthly figures of what it's going to cost our residents, it's really not more than getting it from La Crosse."

"I think the Town of Campbell is in a rather unique situation," said Town Board Member Rodney Schellpfeffer. "We have alternatives."

"Once we have water ... why would we want to annex?" he asked.

Opponents also say Medinger didn't involve the council soon enough in the negotiations. In La Crosse's weak mayor/strong council form of government, and the context that Medinger is a newly-elected mayor with a council containing several veteran, conservative members, has proven lethal.

Late last year, when the council's division on the agreement became apparent, Council Members David Morrison and Mark Johnsrud agreed to participate in the negotiations to win changes to make the deal more palatable. They're now in the proponents' camp. But deal opponents say it was too little, too late. "The problem is that the council has not been sufficiently involved in the negotiations," said Councilman Steve Taylor. "The council was not involved at all for a year and a half. The changes we wanted have not been made."

Taylor said he got more information on the agreement from a Campbell town board member than from Medinger. "That's not true," Medinger responded.

"I will never admit that I should have involved more council members early on," he said. "I thought having the president of the council on the negotiating team was significant representation. Unfortunately, the president of the council turned out to be against the agreement."

If Morrison and Johnsrud had not joined the negotiating team, Medinger acknowledged the agreement would have been long dead.



In addition, a deal between Campbell and a major La Crosse industry has caused council members to distrust Campbell officials. The SkipperLiner Marine Group Inc. boat-building facility, which has outgrown its main location in La Crosse, expressed interest in two sites in La Crosse. When both fell through, SkipperLiner considered the site of a former marina on Campbell's French Island.

Last December, Kapanke and Medinger told the council the two municipalities perhaps could cooperate on locating SkipperLiner on the site, with the city supplying water and perhaps a Tax Incremental Financing district in exchange for shared tax revenue. Medinger

suggested that perhaps a SkipperLiner arrangement could be tied in with the economic development zone portion of the agreement. But shortly after the January 25 council approval of the agreement, Campbell announced it had completed the deal with SkipperLiner, with no mention of La Crosse's role.

That infuriated some council members. "The SkipperLiner deal — that was kind of a stab in the back," said Councilman Gerald Every, who voted for the agreement in January, but opposes it now.

"I voted for the agreement, but then they stabbed us in the back," said Taylor who also has switched to the opponents' side. "I was willing to give them a chance, but they blew it with me."







## Thank you!

Thank you to all the individuals who took time out of their busy schedules to participate in this quarter's focus groups:

John Andersen, Nancy Barker, Merl Case, John Claypool, Roger Cliff, George Dearborn, Roger Dibble, Gerald Every, Ted Fischer, Joseph Geason, Paul Gordon, George Hall, Mark Johnsrud, Paul Kanter, Dan Kapanke, Greg Keil, David Lamerand, Lee Markquart, John Medinger, Rich Morkwed, Dave Morrison, William Nielsen, Don Norrell, Mark O'Connell, Brian Ohm, David Oestreich, Jack Perry, Rodney Schellpfeffer, Rick Stadelman, Steve Taylor, Arden Tews, Mike Theo, Wallace Thiel, Dan Thompson, Bob Vitas, Forrest Weber and Patrick Zielke.

[www.oncommonground.org](http://www.oncommonground.org)

We would like to remind our readers that all the information in *On Common Ground* is available on the internet for viewing, downloading and reprinting.



Phil Salkin *Chairperson*

Doris J. Hanson *Vice Chairperson*

Bud Arnold  
*Schmidt-Haus Realty-MW*

Kevin Dittmar  
*Dittmar Realty, Inc.*

Don Haldeman  
*Rural Insurance*

Paul Kent  
*Davis & Kuelthau S.C.*

Kim Kunz-Hurtado  
*Hurtado S.C.*

Bill Malkasian *Secretary/Treasurer*  
*Wisconsin REALTORS® Association*

Brian Ohm  
*University of Wisconsin-Madison*

Mark Riehl  
*Wisconsin State Council of Carpenters*

Richard Stadelman  
*Wisconsin Towns Association*

David K. Stark  
*Stark Company*

Kerry D. Vandell  
*University of Wisconsin-Madison*

Tom Walker  
*Wisconsin Transportation Builders Association*

Dennis Weinhold  
*North Avenue Associates*

Mark Williamson  
*Madison Gas & Electric*

Gerald L. Wuebben  
*Wisconsin Builders Association*



**commonground**<sup>®</sup>

P.O. Box 1473  
Madison, WI 53701-1473  
[www.oncommonground.org](http://www.oncommonground.org)