

Wisconsin Statutory Authority for Boundary & Related Agreements

Background

The impacts of growth and change do not respect neat jurisdictional boundaries. Changes in one community can have important effects on neighboring jurisdictions. Concerns may arise over a range of issues, including...

- **Conflicting uses**, such as residential developments springing up next to farms.
- **Fiscal concerns** over the cost of delivering public services, such as water, sewer and public safety protection, and over the capacity of existing facilities, such as schools, to meet increased demand.
- **Health and safety concerns** over matters such as water quality and traffic safety.
- **Loss of natural, agricultural and cultural resources** (e.g., degradation of lakes and streams, loss of productive farmland and destruction of historic buildings).
- **Changes in quality of life and community character**, as shown, for example, by traffic congestion, decaying downtowns, and development in green areas.
- **Competition between communities** for businesses and development, such as commercial development and high-end housing that may help a community's tax base and economy.

Because of the area-wide implications of growth, intergovernmental conflict often arises. A common scenario is when growth occurs in a town area near a city or village and the town cannot afford to provide costly services (typically public water and sewer) to the development. The neighboring city or village may be able to supply these services, but may require annexation as a condition of delivery. The town may resent not having a say in whether an annexation takes place, losing tax base and being consumed by its city or village neighbor. It may be driven to challenge the annexation in court, involving both communities in a costly legal battle, with no clear "winner." A town may even file a petition for incorporation to protect its borders, at least temporarily, during the lengthy and rigorous incorporation process. On the other hand, a growing city or village may be frustrated by its own lack of power to annex unilaterally (a power that exists in many states) and by dealing with growth on an *ad hoc* basis, often in a reactive posture as developers and landowners approach the city or village.

This fact sheet discusses statutory authority for local governments to work together on land use issues that arise along municipal borders. (References are to sections of the *Wisconsin Statutes*: for example, "sec. 66.30.") It first looks briefly at joint planning, cooperation and coordination, to set the stage, and then examines statutory authority for towns and their city and village neighbors to enter into boundary and related agreements.

Smart Growth Framework

While cooperation between government units has been discretionary, it has gotten a boost with the recent enactment of the Comprehensive Planning & Smart Growth Law in the 1999-2001 state budget act. This legislation sets forth *14 comprehensive planning goals* for “local governmental unit” comprehensive plans—that is, county, city, village, town and regional planning commission comprehensive plans.* The goals include “*Encouragement of coordination and cooperation among nearby units of government.*” The local governmental unit comprehensive plans are required to contain 9 specified elements, including an intergovernmental cooperation element “for joint planning and decision making with other jurisdictions, including school districts and adjacent local governmental units, for siting and building public facilities and sharing public services.” This element must incorporate any agreements under secs. 66.023 and 66.30 (discussed below), as well as any plans or agreements involving the regional planning commission, and must describe processes to resolve conflicts.

Although local governmental units are not specifically required to adopt comprehensive plans, *all* of a unit’s programs and actions relating to land use must, by January 1, 2010, be consistent with the unit’s adopted comprehensive plan. So if local governmental units intend to engage in such activities as zoning and subdivision regulation, annexation, incorporation, and indeed in any “other ordinance, plan or regulation” that relates to land use, they must have a plan and implementation program in place by 2010. Communities will have to start planning to meet this requirement well in advance of the effective date, and intergovernmental cooperation will be an important element of their planning.

Boundary & Related Agreements--Statutory Authority

Intergovernmental Agreements (Sec. 66.30)

This intergovernmental cooperation law generally allows “municipalities” to enter into cooperative arrangements. The term is broadly defined, and covers counties, cities, villages, towns, school districts, lake districts, sanitary districts and other government entities, including the state. Under this general law, municipalities may contract with each other, and with Indian tribes and bands “for the receipt or furnishing of services or the joint exercise of any power or duty required or authorized by law.” This general power is in addition to specific statutes authorizing cooperation, and is to be liberally construed. If parties to the contract have varying powers under the law, each may act under the contract to the extent of its powers. Under this authority, the parties can specify matters such as the work to be done, how payment shall be made, who has responsibility for reviewing the work, and the duration and termination of the agreement. A joint commission may be established to oversee the activity.

Joint planning can be accomplished under the authority of this section. One or more communities could contract with another governmental unit, such as the county or regional planning commission, to conduct planning, or communities could jointly hire a consultant to prepare a plan. Benefits of such an exercise of joint planning include not only potential savings for the communities involved, but also increased agreement and consistency with regard to how an area—crossing jurisdictional lines—should develop and be served. For example, a joint plan could address what areas should be preserved in their natural state or remain in agriculture, which areas should be developed to meet market demand, and how and when services will be provided to such areas.

* The 14 local comprehensive planning goals are found in sections requiring state agency activities and rules to balance the agency’s mission with the goals. Secs. 1.13(2) & 227.113. Addressing these goals is also considered in awarding Smart Growth planning grants and in the Smart Growth dividend aid program. Sec. 16.965(4) & Sec. 9101 (18zo)(nonstatutory provisions, Act 9). The goals relate closely to the 9 required elements in a comprehensive plan. Sec. 66.0295(2). See 1999 Wis. Act 9 for these provisions.

The intergovernmental cooperation authority can be used for the *sharing of public services* between neighboring communities. This has land use implications because the ability to develop and market an area is related to the government services provided. In addition, this authority can be other land use related authority, such as the joint review of development proposals. Joint review of subdivision plats, for example, is specifically authorized as a sec. 66.30 activity. Sec.236.10(4).

Finally, this statute has been used to make agreements concerning local *boundaries*. A town board, for example, might agree not to contest annexations in an area designated for city or village growth, in return for the city or village's promise not to annex productive agricultural land. While the use of this statute to make such an agreement is questionable as to its binding effect on future governing bodies, this authority is nevertheless used because it is quick and its proponents believe that the willingness of the parties to agree is the key factor.

Boundaries Fixed by Court Judgment (Sec. 66.027)

This section applies to cities, villages and towns ("municipalities") with boundary disputes. Any two municipalities in court to test the validity of an annexation, incorporation, consolidation or detachment may enter into a stipulation to settle the litigation and *determine the common boundary line* between the municipalities. The statute does not specify whether service agreements may be part of the agreement. However, the authority to enter into cooperative service agreements is broad (see the previous discussion of sec. 66.30), and communities have incorporated such agreements when operating under sec. 66.027.

If it approves of the proposal, the court may enter final judgment incorporating the stipulation and setting the common boundary. However, before a boundary change takes effect, it must be approved by the governing bodies of both municipalities. Also, the proposed change is subject to a referendum, involving the electors in the affected area, if at least 20% of them petition for such referendum. When such referendum is held, the boundary change cannot take effect unless approved by the electors. This referendum authority is in contrast to the referendum which may be held under the cooperative plan approach (sec. 66.023, below), which is advisory and involves all of the electors of the affected communities.

Using the court judgment approach (sec. 66.027) has the advantage of creating certainty over municipal borders. That is, as with an agreement under the cooperative plan law (sec. 66.023, below), and in contrast to one under the intergovernmental cooperation law (sec. 66.30, above), an agreement under the court judgment statute can bind future governing bodies with respect to the affected border. However, use of this approach has certain drawbacks: it requires litigation, and is therefore reactive; it does not necessarily involve a well-thought out plan; and the scope of an agreement under this section has been neither specified in the statutes nor interpreted by the courts. Also, this procedure is the only one with the possibility of a binding referendum, which injects uncertainty into the proceedings.

Boundary Agreements under a Cooperative Plan (Sec. 66.023)

This statute (adopted in the 1991-92 legislative session) allows cities and villages and neighboring towns to *determine municipal boundaries and enter into service agreements* under a cooperative plan approved by the Wisconsin Department of Administration (DOA). The plan may freeze boundaries, provide for phased boundary changes, or provide that boundary changes occur if certain conditions are met.

This law involves complex planning and approval requirements and addresses a problem of legal uncertainty under the previous law. Specifically, while communities may make service agreements under the intergovernmental cooperation law (sec. 66.30, above), there is legal doubt as to whether that general law can be used to bind future municipal and town governing bodies regarding annexations or other boundary changes. The cooperative plan law (sec. 66.023) was developed by a Legislative Council

Special Committee so that neighboring communities would have legal certainty in planning for boundary freezes or changes over the course of an agreement.

This law contains extensive requirements for the adoption of a cooperative plan, including the following:

- The plan must cover physical development, boundaries and services, and address environmental consequences and affordable housing needs.
- The plan must be consistent with federal and state laws and regulations, as well as local ordinances.
- The plan must be for a period of 10 years, and can be extended longer if approved by the DOA.
- The law provides for notice to other units of government, including counties, public hearings and the possibility of an advisory referendum.
- DOA must review and approve a plan before it takes effect.

This recent law involves cities, villages and towns in extensive planning efforts and allows them to decide boundary issues and related development matters, rather than be put in the position of reacting to annexation proposals from private landowners. The law thus fosters local cooperation. Although the law does not give the county a significant role in the process, the county staff may nevertheless play an important role, as occurred when the Portage County planning staff facilitated the Stevens Point-Plover agreement under this section by providing technical and public outreach support and serving as liaison.

This statutory authority has the advantages of being comprehensive and able to provide for boundary changes with legal certainty. It does not require litigation. In addition, because this law requires compliance with state and federal laws and regulations, it serves to raise state-local matters and allow them to be well planned and coordinated. The extensive procedural requirements also help ensure that the public is informed and has an opportunity to become involved in shaping the plan. However, this law has been criticized for its comprehensiveness. Because of the complexity of the statutory requirements, the cooperative planning process may be lengthy and costly and many communities therefore choose a quicker and simpler route for their agreements. However, in light of the comprehensive planning requirements in the Smart Growth Law, many communities will have comprehensive planning in place when they consider using the sec. 66.023 authority, so its planning requirements will not seem so onerous.

Tax Revenue Sharing Agreements (Sec. 66.028)

This section allows a “municipality” (a city, village or town) to share in the growth of a contiguous municipality or Indian tribe by receiving an agreed upon portion of the revenue resulting from that growth. More than 2 municipalities may be involved, but each municipality must be contiguous to at least one other in the agreement.

Although the statute is actually entitled “Municipal revenue sharing,” it provides that the revenues that may be shared are from “taxes” and “special charges.” Taxes include property taxes and room taxes; special charges include charges against property to pay for costs of services to the property. This law, developed by a Legislative Council Special Committee in the 1995-96 legislative session, is deliberately broad and contains few requirements, so as to provide communities with flexibility. Under the statute, agreements must...

- be for a minimum of 10 years,
- describe the area subject to the agreement,
- specify the formula and dates for sharing the revenues, and
- specify how the agreement may be terminated.

Agreements under this section can include “appropriate matters, including any agreements with respect to services or agreements with respect to municipal boundaries under s. 66.023 or 66.027” (see

above). Instead of competing for new development or becoming involved in annexation battles, cities, villages and neighboring towns can work together to attract growth that will benefit the area. A city or village, for example, could agree to sell services such as water and sewer to commercial (or even residential) development locating in an adjacent town, in return for a share of the revenues (e.g., property tax revenues and room tax revenues) generated by the new development. The agreement could also be coupled with agreements on annexations and boundaries.

Conclusion

As Wisconsin continues to experience growth and change, land use will remain a controversial topic, often involving intergovernmental conflict. Joint planning by neighboring communities can lessen conflict and get communities pulling in the same direction. Various statutory tools exist to enable communities to carry out agreements on how common problems and issues can be addressed. These tools enable communities to plan together and make rational decisions about where growth will occur, including the setting or changing of boundaries, and how public services will be provided to the development. By working together, local units can help secure benefits for the larger “community”—the area in which the residents of the various jurisdictions live, work, attend school and play.

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COMPARISON OF STATUTORY BOUNDARY CHANGE METHODS

	<i>Annexation (Sec. 66.021)</i>	<i>Inter- Governmental Agreement (Sec. 66.30)</i>	<i>Boundaries Fixed by Judgment (Sec. 66.027)</i>	<i>Boundary Agreement under a Cooperative Plan (Sec. 66.023)</i>
<i>Other term(s) for this authority</i>		(General) Intergovernmental Cooperation	Stipulation and Court Order	Cooperative Boundary Agreement
<i>Typically used to...</i>	Shift town land into adjacent city or village so the land can receive urban services	Contract for municipal services between neighboring communities. May cover planning. Sometimes used for boundaries	Settle annexation lawsuit between town and adjacent city or village	Resolve complex boundary issues between town and city or village by engaging in a thorough planning process
<i>Town board involved?</i>	Not unless they challenge in court	Yes	Yes	Yes
<i>Statute mentions boundary change as a purpose?</i>	Yes	No (binding effect on future governing body is uncertain)	Yes	Yes
<i>Phased boundary changes authorized?</i>	No	No	No	Yes
<i>Tax revenue sharing statute (sec. 66.028) references this authority?</i>	No	No	Yes	Yes
<i>Agreement subject to state agency review?</i>	“Agreement” not involved. Dept. of Admin. comments on annexations in counties of 50,000 population or more	No	No	Yes (Dept. of Admin. and other agencies involved in review)
<i>Planning requirements specified?</i>	No	No	No	Yes
<i>Public hearing required?</i>	No	No	No	Yes
<i>Referendum provision in the statute?</i>	Certain annexations may be subject to referendum of affected electors	No	Yes. May involve a referendum for affected electors as prerequisite to judgment	Yes. May involve an advisory referendum for electors in the involved communities
<i>Simple to put into effect?</i>	Yes (for the city council or village board)	Yes	Yes, but requires litigation	No, extensive planning and procedural requirements apply