FILED
06-27-2022
Clerk of Circuit Court
Outagamie County
2021CV000712

**DATE SIGNED: June 27, 2022**

Electronically signed by Mark J. McGinnis
Circuit Court Judge

STATE OF WISCONSIN CIRCUIT COURT OUTAGAMIE COUNTY
BRANCH 1

WISCONSIN PROPERTY TAXPAYERS, INC.

Plaintiff,

v. Case No. 21-CV-712

TOWN OF BUCHANAN

Defendant.

**ORDER GRANTING SUMMARY JUDGMENT FOR PLAINTIFF**

Plaintiff filed this action seeking declaratory and injunctive relief on September 16, 2021. The parties filed cross motions for summary judgment, briefs in support, response, and reply, and supporting affidavits, and a joint stipulation of relevant documents. This Court heard arguments on the motions on June 6, 2022.

The Court HEREBY ACCEPTS the joint stipulation of the parties and the undisputed facts as outlined in their briefs.

Having considered the parties' briefs, affidavits, and arguments, and the documents in the joint stipulation, and for the reasons stated on the record during the June 6, 2022, hearing as

reflected in the attached transcript, the Court HEREBY **GRANTS** Plaintiff's Motion for Summary Judgment and **DENIES** Defendant's Motion for Summary Judgment.

Based upon the briefs and arguments of the parties and for the reasons stated on the record at the June 6, 2022, hearing as reflected in the attached transcript, the Court HEREBY ISSUES a declaratory judgment and permanent injunction as follows:

**DECLARATORY JUDGMENT**

The Court HEREBY DECLARES that the Town of Buchanan's Transportation Utility Fee, as currently implemented, violates Buchanan's levy limit under Wis. Stat. § 66.0602. Going forward, any amount that the Town of Buchanan collects from the Transportation Utility Fee, as currently implemented, must be counted against its levy limit.

**PERMANENT INJUNCTION**

Defendant Town of Buchanan is HEREBY ENJOINED from levying, enforcing, or collecting the Transportation Utility Fee, as currently implemented, in any amount above its levy limit.

THIS IS A FINAL JUDGMENT FOR PURPOSES OF APPEAL

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STATE OF WISCONSIN CIRCUIT COURT OUTAGAMIE COUNTY

BRANCH 1

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WISCONSIN PROPERTY TAXPAYERS, INC.,

Plaintiff,

vs. Case No. 2021 CV 000712

TOWN OF BUCHANAN,

Defendant.

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MOTION HEARING

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Before the Honorable MARK J MCGINNIS,
Circuit Court Judge presiding

June 6, 2022

Outagamie County Courthouse
320 South Walnut Street
Appleton, Wisconsin

APPEARANCES:

LUKE N. BERG, Attorney at Law,
appeared in person on behalf of the Plaintiff.

RICHARD J. CARLSON, Attorney at Law,
appeared in person on behalf of the Defendant.

ASHLEY LEHOCKY, Attorney at Law,
appeared in person on behalf of the Defendant.

Prepared by Taylor Zeegers, Official Court Reporter

P R O C E E D I N G S

THE COURT: We'll go on the record today in case number 21-CV-712. This is the matter involving Wisconsin Property Taxpayers, Inc. vs. the Town of Buchanan.

Counsel, you want to state your appearances?

MR. BERG: Luke Berg with the Wisconsin Institute for Law and Liberty on behalf of Wisconsin Property Taxpayers, Inc.

MR. CARLSON: Richard Carlson on behalf of the Town of Buchanan and Ashley Lehocky on behalf of the Town of Buchanan.

THE COURT: All right. Good morning. And we are set today for a motion hearing. Not sure if Counsel wants to make argument or any comments before a decision is made, and if so, we'll start with you, Mr. Berg.

MR. BERG: Sure, Your Honor. So the issue in this case is whether Buchanan's transportation utility fee is legal. So I just want to begin by emphasizing that you won't find that phrase in any statute anywhere. There's no law that authorizes the transporation utility fee. There's nothing in the statutes that authorizes that. So to defend the fee, the district has essentially tried a shotgun approach. It gives this court a variety of theories, and those theories have shifted over the course of its briefing. It initially said that the fee is like a special assessment, but then by its reply it tells this court explicitly that they're not arguing that it's a special assessment. It initially argued it's a special charge, and

then it seems to have abandoned that theory, as far as I can tell, by the time it got to its reply brief. Same with its theory that this is authorized by its home rule authority. It seems to have abandoned that theory as well. So the theory that it lands on is under 66.0827. They argue that it is a tax. They concede that it's a tax, but one authorized under 66.0827. So I'm going to focus my remarks on that, but if the Court has questions about those other theories, I'm happy to talk about those as well. But otherwise I will rely on our briefs for those other theories.

So 66.0827 authorizes towns to create a utility district and to fund things in the utility district, but the statute only authorizes two ways to fund the utility district; either special assessments or property taxes. The town has conceded this is not a special assessment, so the only other option to fund utility district is property taxes. And property taxes are subject to the uniformity clause and levy limits. Now, the Town argues that this property tax under 66.0827 isn't subject to either the uniformity clause or levy limits, but they site nothing for that. They site no case, no statute, no regulation, nothing, whatsoever, to give this Court a reason to believe that the property tax referenced in 66.0827 is not subject to those requirements.

So I will start with the uniformity clause. We have sited numerous cases in our brief holding that the uniformity

clause applies broadly to any kind of property tax. The clearest quote I think is from Knowlton's, that's the 1859 case we sited in our brief that's been quoted with approval several times since by the Wisconsin Supreme Court, including Gottlieb and Sigma Tau, but I will just read the quote. It says, "When property is the object of taxation, it should all alike, in proportion to its value, should contribute towards paying the expense of such benefits and protection." So what courts have said is when there is a property tax, it is subject to the uniformity clause. So the basic argument is if Buchanan's TUF is property tax, a taxation of property, that is subject to the uniformity clause. If it's not a property tax, then it's not authorized because the only thing authorized under 66.0827 is a taxation of property. That's in the text of the statute.

The case that I think is most analogous here is City of Plymouth vs. Elsner. The issue in that case was a tax on electrical meters. It was a $0.50 tax on residential electrical meters, and a dollar tax on commercial electrical meters. And the Court said we're not quite sure how to characterize this either as an excise tax or a property tax, because if it's an excise tax there's no authority for it, and if it's a property tax it's a uniformity clause violation. So that's the exact same logic that we're asking the Court to apply here. If this is a property tax, it's a uniformity clause violation. If it's not a property tax, there's no

authority for it. The Court in the City of Plymouth found basically two uniformity clause violations, both of which apply here as well. The first was that the tax on electrical meters was not based on value. The value of the property, that's exactly the same thing here. The Buchanan's TUF is based on a predicted use of the roads by different types of properties. Every single residential property is charged the exactly the same amount. So a property that's three times the value of another property is charged the same amount as -- as one that is a third of the value. That is clear uniformity clause violation under the City of Plymouth. And then the second violation the City of Plymouth found was that the city there had created two separate classes. So it charged residential properties different amounts than commercial properties. The exact same thing is true here. Buchanan has created two separate classes. One for residential properties and one for commercial properties. So this is a pretty clear uniformity clause violation if this is a property tax, as Buchanan argues that it is.

And then the second problem with Buchanan's TUF is it violates the levy limits statute. So the levy limits statute has a very long, exhaustive list of exceptions in it. This is 66.0602 3(a) through (n), so very long list. And that statute makes clear that except as provided in these exceptions, the levy limit applies. There are even some exceptions in other

statutes. So a comparable exception we found was for metropolitan sewage districts. There's a statute that allows towns to fund such districts by a tax on property in the district very similar to 60.0827, except those statutes provide an explicit exclusion from other limitations in the law. So that would include levy limits. Same with the bridge repair tax that is authorized by 82.08, and there's an explicit exception for it in the levy limit statute, 66.0602. There is no exception anywhere in 66 -- 66.0602 or in 66.0287 for the property tax under that statute, or for funding roads. So because of that, the levy limit clearly applies and Buchanan is using this fee to blow past it's levy limit. There's no dispute in this case that Buchanan is at its levy limit of about 2.4 million, and both sides agree that Buchanan has used the fee to raise an additional 850,000. That's roughly 33 percent of it's levy limit. So it is using this fee to evade the levy limits statute, and that is illegal for all the reasons we've raised in our brief.

If this court holds that this is permissible, it will effectively be an end prong around the levy limits statute. It will allow towns like Buchanan and others around the State to evade their levy limits by simply renaming taxes a fee and paying for most of the infrastructure in the town via something like that. So what we are asking the Court to do is declare the fee invalid and enjoin future collection of it. Happy to

answer any questions the Court has.

THE COURT: All right. Thank you, Mr. Berg. And who is making the argument, Ms. Lehocky or Mr. Carlson?

MR. CARLSON: I'd like to respond.

THE COURT: Okay.

MR. CARLSON: We should be so clever. First and foremost, it is a utility tax. It is not a town tax. If the taxation of property in the district is authorized by subparagraph 2 in 66.0827, why on earth would any town, village, or city go through the bother of creating a utility? If it was a general property tax you would not need any kind of utility at all. This thing would just be superfluous. But the taxation of property in the district is not a general property tax, as evident by the following. It doesn't say it's a general property tax. It says it is a taxation of property in the district. Throughout the statutes, every file, you will find that the general property tax that she's referring to -- that is what the name of it is, a general property tax or a real estate tax. It does not say that in 66.0827. A utility district by law is not a taxation jurisdiction for general property taxes. It can't levy a general property tax. Could the legislature be that stupid to give a utility district authority to impose a general ad valorem real estate tax when it is not a taxing jurisdiction? There is no statutory authority for a utility to levy a general property tax.

The utility district fund is required to be in a separate account. It is separate and apart from the city, village, or town general fund. General property taxes go into the general fund. There is a reason that this is separated out in 66.0827, and the reason is it is not a general property tax. The purpose of the utility district is focused on funding public improvements; highways, sewers, sidewalks, street, lights. It is not an authorization to be used for funding police, fire, health insurance, libraries, garbage collection, and so on. It is a focused purpose. The utility fund is limited to paying the cost of public improvements not paid for by special assessments. Special assessments are referred multiple times in 66.0827, and that is because the utility tax is akin. It is similar. It is auxiliary to paying for public improvements by special assessments. And special assessments, as we've established in our brief, are also a form of taxation on property. And so are special charges, also in the nature of a tax on property. Public --

THE COURT: I want to just ask a question, Mr. Carlson. And I know Mr. Berg summarized your position on special assessments and special charges, and I thought that what he had said was accurate based on what I've read.

MR. CARLSON: I don't think so.

THE COURT: Okay. So maybe --

MR. CARLSON: Especially --

THE COURT: But it's still your position that the TUF is either a special assessment or a special charge?

MR. CARLSON: It's not a special assessment and it's not a special charge.

THE COURT: Okay. And I think that's what you said, Mr. Berg, right?

MR. CARLSON: Right.

THE COURT: So the town is not taking the position that the transportation utility fee is either a special assessment or a special charge, is that correct?

MR. CARLSON: Correct. Correct.

THE COURT: Excellent. That's what I understood your position to be after the briefing.

MR. CARLSON: Special assessments are authorized in section 66.703. Different procedure.

THE COURT: Okay.

MR. CARLSON: And we are saying as far as an inherent nature, it is similar to a special assessment, but it is not a special assessment. And the reason this is a valuable alternative for a city, town, or village, is a special assessment is limited to a very specific small geographic area, and the flexibility that would be offered in a tax property in the utility district is not there in a special assessment. The special assessment -- the moment a final resolution adopting a special assessment is made, that becomes a lien on property.

So if you are giving people 10 or 15 years to pay this off, the entire amount, which could be 20, 30, $40,000, becomes a lien on that property. And a lien on that property, as I mentioned in my brief, that will preclude, or certainly limit people from refinancing, taking a home equity loan, and paying interest charges for -- you know, that are going to accumulate for a period of 10 or 15 years. That's why this is another track of alternative. As the cost of road construction increases, the ability of people to pay for special assessments in a short period of time is getting limited.

Public improvements benefit property, and that's why I say the utility tax is basically a means of funding public improvements. There is a benefit to properties for road improvements. If subparagraph 2 of Section 66.0827 amended taxation by general property taxes, it would have said so. Instead, it describes funding by taxation of property in the district, and it's very careful in the language that it uses. The taxation of property in the district under sub.(2) is also clearly distinguishable from general property taxes by procedures; 66.0827 sub.(2) states that the size of the fund shall be based on an annual estimate by the department in charge of public works in cities, in villages, and by the town share in towns. Again, this is the focus on public improvements only, and that this is separate and apart from all the procedures that are contained in Chapter 65 and Chapter 70

of the Wisconsin statutes about how you do general property taxes.

There is a litany of deadlines, procedures, checkpoints, in terms of general property taxes. This is simply an annual estimate by the department in charge of public works. The annual estimate is required to be filed by October 1st. This, again, is completely different, separate, and apart from general property taxes. The differentiation is profound and intentional. The legislature would know it was different. Confoundly different. There is a rule, a statutory interpretation that the legislature is mindful of all other statutes, and it is impossible to believe that the legislature would have forgot about provision upon provision that one must comply with procedure upon procedure for levying general property taxes. There is -- no claim is made here by the property taxpayers that the utility district did not comply with the enabling authority of 60.0827. We followed it to a tee. The enabling authority is in plain language. There is no ambiguity here. It is one of the most comprehensible provisions that you will ever find in the Wisconsin statutes. It's straight forward.

Really, what WPT challenged is a thinly veiled challenge to the wisdom of the legislature, and the constitutional challenge to a clear, straight forward provision of section 66.0827. It's not much that's confusing about

66.0827. As a matter of fact, the fund that is referenced in 66.0827 must be funded by a taxation of property in the district. It has to be. It's a shall. It's mandatory. Basically, what WPT is doing is it is mischaracterizing the taxation of property in the utility district as a general property tax and then saying if it's a general property tax it is subject to uniformity requirements and levy limits. So basically, they are mischaracterizing it, and I'm saying we don't comply with what they are mischaracterizing it as. WPT must prove to this court beyond a reasonable doubt that 66.0827 is unconstitutional. If doubt exists as to the constitutionality, it must be resolved in favor of constitutionality. If any reasonable basis exists upon which a statute may be found constitutional, the Court must presume the legislature enacted the state -- statute on that basis. They have not overcome their burden.

THE COURT: We're not talking anything about a constitutionality of a statute here, are we?

MR. CARLSON: Well, he's saying if it's a general property tax it's not based on value, it's not ad valorem, and it's not -- and it doesn't comply with the -- so that's -- that's the constitutional aspect. And he's saying it doesn't apply with the levy limits. The levy limits are statutory. The uniformity is constitutional. So basically, he's saying this is not uniform, it's not based on value as required by the

constitution, and therefore it is unconstitutional.

THE COURT: The conduct is unconstitutional is the argument, not that the statute is unconstitutional, is that right, Mr. Berg?

MR. BERG: Yes.

MR. CARLSON: Well, if he interprets the statute as requiring uniformity and ad valorem, of course the statute is unconstitutional.

THE COURT: Okay. I understand the argument. This is the first time I think I've heard it. You didn't write that in your brief at all, did you?

MR. CARLSON: I did talk about the constitutionality.

THE COURT: Okay. I'd like you focus, Mr. Carlson, if you would. And I don't know if you were done. It sounded like you were done. Do you have other comments?

MR. CARLSON: If you say so, I am.

THE COURT: No. You're definitely not. But I -- you did touch on the levy limits.

MR. CARLSON: Yes.

THE COURT: And I don't think you touched on it in your response brief either. And I'm not sure if it was intentional or accidental, but I think the concern that I have -- or one of the concerns would be, you know, the transportation utility fee being an amount that would put the Town of Buchanan in excess of the levy limits.

MR. CARLSON: It is in excess of the levy limit.

THE COURT: Right. And --

MR. CARLSON: But the levy limit applies to general property taxes. The levy limit applies to the taxing jurisdiction of which the utility is not a taxing jurisdiction.

THE COURT: All right. Anything else, Mr. Carlson?

MR. CARLSON: No.

THE COURT: Back to you, Mr. Berg. Anything?

MR. BERG: Yes, Your Honor. Just a few points I want to make. So the Town's argument is basically that there's a distinction between general property taxes and a taxation of property under 66.0827, and that one is subject to levy limits, the uniformity clause, and the other is not. This distinction between general property taxes versus taxation of property under 66.0827 is beside the point. The point is court's have long held, repeatedly held that the uniformity clause applies to all property taxes. Doesn't matter whether you call it a general property tax, whether it's a property tax under 66.0827, or whether it's a property tax under some other statute. The uniformity clause applies to property taxes, and 66.0827 clearly says the only way to fund it is a taxation of property. So even if that taxation of property is not a general property tax, it's still a property tax, and therefore it's still subject to the uniformity clause. And Buchanan sites nothing to this court; sites no example of any property

tax that is not subject to the uniformity clause.

MR. CARLSON: Your Honor, may I respond?

THE COURT: Yeah. Just let Mr. Berg finish first.

MR. BERG: Mr. Carlson started with, well, then what is the point of 66.0827, and I think the point of that statute is to allow a town to subdivide its jurisdiction. Say the Town of Buchanan wanted to provide gutter to its roads for half of its town but not other half. It would be unfair to charge the entire town for the cost of upgrading half the town's gutter. So the point of the utility district statute is a limited exception to the uniformity clause. It allows a town to subdivide its property and charge an extra tax on those who are going to receive an improvement. But that extra tax is still a property tax, it's still subject to the uniformity clause, and it's still subject to the levy limits statute.

And the levy limit point I want to make is if you just read through the exceptions in the levy limit statute, it's very clear that it applies to a lot more than just general property taxes. The exception for the bridge repair tax I think proves the point. The bridge repair tax is authorized in a separate statute, 82.08, just like the tax in 66.0827, and yet the levy limit statute has an explicit exception for the bridge repair tax. That wouldn't be necessary if the levy limit statute only applied to general property taxes. So I think it's pretty clear from the statute that the levy limit

statute applies broadly and covers all types of property taxes, including taxation of property under 66.0827. And that's all.

MR. CARLSON: May I respond, Your Honor?

THE COURT: You may.

MR. CARLSON: A special assessment is a tax on property. I listed several cases -- more than several in my brief. Special assessments were deemed a tax on property for 150 years. As a matter of fact, the use of special assessments was done by cities and villages in Wisconsin before statehood, and before the constitution was adopted in Wisconsin. And the court says a special assessment is a special form of property tax not subject to the rule of uniformity. There is a federal case that says a special charge under 66.0627 is a tax on property, and that too is not subject to the rule of uniformity. Every tax on property is not a general property tax. And I gave a couple more examples in my brief for village enabling for a highway tax, for a sidewalk tax on property. This is just a bugaboo that any tax on property is automatically a general property tax. That is not true, and that's not been true for 150 years.

THE COURT: Okay. Anything else, Mr. Carlson?

MR. CARLSON: No.

THE COURT: Mr. Berg?

MR. BERG: No.

THE COURT: You know, I am just going to start my

decision by indicating a couple of things. First off, I appreciate the work that both of you attorneys and your law firms have done. I think you've done an excellent job of identifying the issues, siting the relevant authority, and staying focused on, you know, what's in dispute. I also want to comment that each of you has a lot of experience and expertise in this area, and a lot more expertise than me. And it's interesting because you can read two different briefs from experts like you, two of you, and you guys are saying different things. And I'm not suggesting by making a decision that I know it better than either of you, because I definitely don't. I'm just trying to make what I think is the right decision given the stipulated facts in this case, the identified issues, and what case law and the statutes, I think, require.

I wanted to -- I questioned you, Mr. Carlson, today because I'm not intending on ruling that any statute is unconstitutional. That's not at issue today. My take on what was briefed, and I think what was argued, is I need to identify in this case whether the transportation utility fee is a tax, and whether or not that amount is in excess of the levy limits, and then possibly decide the uniformity clause. And I'm going to keep my decision limited to that. I expect, and I think you guys told me early on in this case, that this is going to go up to a higher court. So if somebody, again, smarter than me will be making this decision. And my role right now is just to give

it my best effort and then see where the chips fall.

I have reviewed all of the filings, including, you know, the summons and complaint, which was filed by Plaintiff, and the four causes of action, the answer and affirmative defenses that you filed, Mr. Carlson. And, for example, in your affirmative defenses you had argued no standing. That issue hasn't been briefed, that issue isn't at issue today, and I'm not deciding it. So I'm staying focused on what you guys have asked me to decide by briefings, and by the way you postured this case, and anything else that may have been alleged and didn't get argued I think is waived. And that would be one of those issues. But there are a lot of them on both sides of the aisle.

I also want to make it clear that I've read each of your briefs. I read the response briefs; the reply briefs. I've read the cases that both sides have sited. I have also analyzed the decision from the Wisconsin Supreme Court earlier this year, which neither side sited, which is called Brown County vs. Brown County Taxpayers Association, and the site is 400 Wis. 2d 781, 799. And to the extent that that may or may not be relevant, I will let you know in a few minutes when it fits into my decision. But neither side put that in their briefs. I'm not sure if it was strategic reasons or not, but I thought it was important to at least identify where the Supreme Court has recently decided, and to the issue that it may be

relevant on in terms of my decision. So I didn't limit myself to what you filed and the cases you filed, and the only exception to that is that one case.

I also have approved the joint stipulation that the parties entered into, which is Document No. 19. Both sides stipulated to the 16 exhibits identified and attached to that document, and that stipulation is approved in its entirety. I also will approve the facts that have been set forth by both sides.

You know, going back to the population of the Town of Buchanan, the size of the Town of Buchanan and the road in terms of miles -- how many miles of roadway are in the town and all the other facts suggested by both sides to the extent that this hasn't been disputed, and it really hasn't been, those facts have been received by me and they are going to be part of my decision, even if I don't mention them specifically.

I think the issue in this case -- and again, I appreciate both of you narrowing it in for me, is the following. The first question, is does the transportation utility fee in the Town of Buchanan -- is that a tax for purposes of taxes when we're deciding the levy limit. And I'm going to start my analysis by just simply indicating I agree. I believe with both sides that it's stipulated, that Wisconsin Statute Section 66.0827 provides authorization on its face and with the clear language to allow the Town of Buchanan to have

the transportation utility fee in the manner that they implemented that back with ordinance number, ordinance chapter 482, which is adopted in December of 2019.

And, Attorney Carlson, you mentioned today that that statute is followed to a tee. And I'm not sure if that's right or not, but I do find that that statute does authorize the conduct, or the acts that were taken by the Town of Buchanan in the creation of and the collection of the transportation utility fee.

I'm also going to find that Wisconsin Statute Section 66.0827 does not provide authorization for the transportation utility fee. That -- I don't think argued anything on that, Mr. Carlson, today. And it seemed to me in the brief that the Town of Buchanan doesn't contest that finding. And, you know, if I'm wrong the Appeal Court will indicate that.

That leaves us then with whether or not the imposition and collection of that transportation utility fee is in excess of the levy limit, and I'm going to conclude that it does. That the collection of the transportation utility fee, which has been referenced as TUF, creates a situation where the Town of Buchanan is in excess of the levy limit. Wisconsin Statute Section 66.0602 limits the amount of governmental subdivision may increase property tax levy in a given year. The limit is tied to the percentage change in net new construction in the county. The Town of Buchanan, in this case, claims that the

tax imposed through the utility district is not a general property tax subject to the statutory levy limit because it's not a taxation district under Wisconsin Statute Section 70.045. Town of Buchanan points to the different requirements that apply to the general property taxes in Wisconsin Statutes Chapter 70 and 74, and the procedures outlined for taxing property to fund a utility district in Section 66.0827. General property taxes are levied upon all general property in the State, except property that is exempt from taxation. That's a quote from Section 70.01. Further, Chapter 70 defines general property as all the taxable real and personal property. Let me say that again. General property as all the taxable and real and personal property. The taxation district means a town, village, or city in which general property taxes are levied and collected.

The Town of Buchanan raises a compelling argument that if all taxes on property were to be treated the same with the legislature, would not have authorized a creation of different types of districts to generate revenue for the different areas over which municipalities have jurisdiction. The legislature did not just create the ability to impose a property tax under Chapter 70 and 74, it also created the ability to create property taxes for specific areas of concern under Chapter 61 and 66. In many places the legislature has distinguished between the types of taxes, and I think that's been argued

today between 74.11, Section 1 of the statutes distinguishes between general property taxes, special assessments, special charges, and special taxes.

In this case, I think the Town of Buchanan has ignored how the legislature has also specified that the imposition of any of these other types of taxes reduces the municipalities levy limit for the general property taxes. The first exception is in paragraph 3 of Section 66.0602, and that subsection states that:

"If a political subdivision transfers to another governmental unit, responsibility for providing any service that the political subdivision provided in the preceding year, the levy increase limit otherwise applicable under this section to the political subdivision in the current year is decreased to reflect the cost that the political subdivision would have incurred to provide that service as determined by the Department of Revenue."

That is from Chapter 66.0602(3)(a). Thus, the Town of Buchanan can create the utility district and impose a transportation utility fee. But that fee cannot be a mechanism to exceed the Town of Buchanan's levy limit.

I also think it's important to just indicate today that there's nothing in this record, and the Town of Buchanan has not put anything in this record, that the transportation utility fee was imposed to offset debt that otherwise would

have incurred or would have been incurred. And that's from the Brown County vs. Brown County Taxpayers Association case from the Wisconsin Supreme Court that I mentioned earlier. In that case, there was a finding of county sales and use tax was an exception to the levy limit under 66.0602(3)(d), because it offset amounts otherwise issues as debt, and therefore did reduce the property on county residences. In this case, there's been nothing to suggest that any of those procedures set forth in 60.0602 were followed, or were part of the decisions involving this transportation utility fee.

I know there's the fourth cause of action in the complaint has to do with the uniformity clause, and a lot of argument was made today, but I think that based upon my decision that the transportation utility fee was in excess of the levy limit, that that is dispositive of the issues in this case, that the summary judgment will be granted in favor of Plaintiff. The transportation utility fee, at least to the extent of how it's been imposed up to today's date, is not valid. If procedures are changed and the Town complies with the statute going forward in the future, there may be ways to make an exception as indicated in 60.0602(3). But that's not in the record before us. And for now I'm going to grant the Plaintiff's request to also enjoin future collection of the transportation utility fee unless the procedures and the process would change to comply with Wisconsin statutes.

Attorney Berg, will you draft the order?

MR. BERG: Yes, Your Honor.

THE COURT: Okay. Anything else from the Plaintiff, Mr. Berg?

MR. BERG: No.

THE COURT: Anything else, Mr. Carlson, from your side?

MR. CARLSON: No. Not at this time.

THE COURT: Okay. So I will sign that order as soon as you send it in, and we'll wait to see what everybody else says about it.

Thanks for everybody's work. We're adjourned.

(Proceedings concluded)

C E R T I F I C A T I O N

I, Taylor Zeegers, do hereby certify that I have been duly sworn as an Official Court Reporter for Branch 1, Outagamie County Circuit Court, in the State of Wisconsin.

I further certify that I have carefully transcribed from my stenographic notes and compared the foregoing pages with the original audio recording from said proceeding and that this transcript is true and correct to the best of my ability.

Dated this 17 June 2022

*(Electronically signed)*
Taylor Zeegers
Official Court Reporter
Outagamie County Circuit Court