



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**





1 then it seems to have abandoned that theory, as far as I can  
2 tell, by the time it got to its reply brief. Same with its  
3 theory that this is authorized by its home rule authority. It  
4 seems to have abandoned that theory as well. So the theory  
5 that it lands on is under 66.0827. They argue that it is a  
6 tax. They concede that it's a tax, but one authorized under  
7 66.0827. So I'm going to focus my remarks on that, but if the  
8 Court has questions about those other theories, I'm happy to  
9 talk about those as well. But otherwise I will rely on our  
10 briefs for those other theories.

11           So 66.0827 authorizes towns to create a utility  
12 district and to fund things in the utility district, but the  
13 statute only authorizes two ways to fund the utility district;  
14 either special assessments or property taxes. The town has  
15 conceded this is not a special assessment, so the only other  
16 option to fund utility district is property taxes. And  
17 property taxes are subject to the uniformity clause and levy  
18 limits. Now, the Town argues that this property tax under  
19 66.0827 isn't subject to either the uniformity clause or levy  
20 limits, but they site nothing for that. They site no case, no  
21 statute, no regulation, nothing, whatsoever, to give this Court  
22 a reason to believe that the property tax referenced in 66.0827  
23 is not subject to those requirements.

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

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

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

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

20 And then the second problem with Buchanan's TUF is it  
21 violates the levy limits statute. So the levy limits statute  
22 has a very long, exhaustive list of exceptions in it. This is  
23 66.0602 3(a) through (n), so very long list. And that statute  
24 makes clear that except as provided in these exceptions, the  
25 levy limit applies. There are even some exceptions in other

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

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

1 answer any questions the Court has.

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

4 MR. CARLSON: I'd like to respond.

5 THE COURT: Okay.

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

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

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

23           MR. CARLSON: I don't think so.

24           THE COURT: Okay. So maybe --

25           MR. CARLSON: Especially --

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

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

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

7 MR. CARLSON: Right.

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

11 MR. CARLSON: Correct. Correct.

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

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

16 THE COURT: Okay.

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

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

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

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

3           There is a litany of deadlines, procedures,  
4 checkpoints, in terms of general property taxes. This is  
5 simply an annual estimate by the department in charge of public  
6 works. The annual estimate is required to be filed by October  
7 1st. This, again, is completely different, separate, and apart  
8 from general property taxes. The differentiation is profound  
9 and intentional. The legislature would know it was different.  
10 Confoundly different. There is a rule, a statutory  
11 interpretation that the legislature is mindful of all other  
12 statutes, and it is impossible to believe that the legislature  
13 would have forgot about provision upon provision that one must  
14 comply with procedure upon procedure for levying general  
15 property taxes. There is -- no claim is made here by the  
16 property taxpayers that the utility district did not comply  
17 with the enabling authority of 60.0827. We followed it to a  
18 tee. The enabling authority is in plain language. There is no  
19 ambiguity here. It is one of the most comprehensible  
20 provisions that you will ever find in the Wisconsin statutes.  
21 It's straight forward.

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

1 66.0827. As a matter of fact, the fund that is referenced in  
2 66.0827 must be funded by a taxation of property in the  
3 district. It has to be. It's a shall. It's mandatory.  
4 Basically, what WPT is doing is it is mischaracterizing the  
5 taxation of property in the utility district as a general  
6 property tax and then saying if it's a general property tax it  
7 is subject to uniformity requirements and levy limits. So  
8 basically, they are mischaracterizing it, and I'm saying we  
9 don't comply with what they are mischaracterizing it as. WPT  
10 must prove to this court beyond a reasonable doubt that 66.0827  
11 is unconstitutional. If doubt exists as to the  
12 constitutionality, it must be resolved in favor of  
13 constitutionality. If any reasonable basis exists upon which a  
14 statute may be found constitutional, the Court must presume the  
15 legislature enacted the state -- statute on that basis. They  
16 have not overcome their burden.

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

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

1 constitution, and therefore it is unconstitutional.

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

5 MR. BERG: Yes.

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

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

12 MR. CARLSON: I did talk about the constitutionality.

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

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

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

19 MR. CARLSON: Yes.

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

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

2 THE COURT: Right. And --

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

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

7 MR. CARLSON: No.

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

9 MR. BERG: Yes, Your Honor. Just a few points I want  
10 to make. So the Town's argument is basically that there's a  
11 distinction between general property taxes and a taxation of  
12 property under 66.0827, and that one is subject to levy limits,  
13 the uniformity clause, and the other is not. This distinction  
14 between general property taxes versus taxation of property  
15 under 66.0827 is beside the point. The point is court's have  
16 long held, repeatedly held that the uniformity clause applies  
17 to all property taxes. Doesn't matter whether you call it a  
18 general property tax, whether it's a property tax under  
19 66.0827, or whether it's a property tax under some other  
20 statute. The uniformity clause applies to property taxes, and  
21 66.0827 clearly says the only way to fund it is a taxation of  
22 property. So even if that taxation of property is not a  
23 general property tax, it's still a property tax, and therefore  
24 it's still subject to the uniformity clause. And Buchanan  
25 sites nothing to this court; sites no example of any property

1 tax that is not subject to the uniformity clause.

2 MR. CARLSON: Your Honor, may I respond?

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

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

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

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

3 MR. CARLSON: May I respond, Your Honor?

4 THE COURT: You may.

5 MR. CARLSON: A special assessment is a tax on  
6 property. I listed several cases -- more than several in my  
7 brief. Special assessments were deemed a tax on property for  
8 150 years. As a matter of fact, the use of special assessments  
9 was done by cities and villages in Wisconsin before statehood,  
10 and before the constitution was adopted in Wisconsin. And the  
11 court says a special assessment is a special form of property  
12 tax not subject to the rule of uniformity. There is a federal  
13 case that says a special charge under 66.0627 is a tax on  
14 property, and that too is not subject to the rule of  
15 uniformity. Every tax on property is not a general property  
16 tax. And I gave a couple more examples in my brief for village  
17 enabling for a highway tax, for a sidewalk tax on property.  
18 This is just a bugaboo that any tax on property is  
19 automatically a general property tax. That is not true, and  
20 that's not been true for 150 years.

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

22 MR. CARLSON: No.

23 THE COURT: Mr. Berg?

24 MR. BERG: No.

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

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

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

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

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

14 I also want to make it clear that I've read each of  
15 your briefs. I read the response briefs; the reply briefs.  
16 I've read the cases that both sides have cited. I have also  
17 analyzed the decision from the Wisconsin Supreme Court earlier  
18 this year, which neither side cited, which is called Brown  
19 County vs. Brown County Taxpayers Association, and the site is  
20 400 Wis. 2d 781, 799. And to the extent that that may or may  
21 not be relevant, I will let you know in a few minutes when it  
22 fits into my decision. But neither side put that in their  
23 briefs. I'm not sure if it was strategic reasons or not, but I  
24 thought it was important to at least identify where the Supreme  
25 Court has recently decided, and to the issue that it may be

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

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

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

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

1 the transportation utility fee in the manner that they  
2 implemented that back with ordinance number, ordinance chapter  
3 482, which is adopted in December of 2019.

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

10 I'm also going to find that Wisconsin Statute Section  
11 66.0827 does not provide authorization for the transportation  
12 utility fee. That -- I don't think argued anything on that,  
13 Mr. Carlson, today. And it seemed to me in the brief that the  
14 Town of Buchanan doesn't contest that finding. And, you know,  
15 if I'm wrong the Appeal Court will indicate that.

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

1 tax imposed through the utility district is not a general  
2 property tax subject to the statutory levy limit because it's  
3 not a taxation district under Wisconsin Statute Section 70.045.  
4 Town of Buchanan points to the different requirements that  
5 apply to the general property taxes in Wisconsin Statutes  
6 Chapter 70 and 74, and the procedures outlined for taxing  
7 property to fund a utility district in Section 66.0827.

8 General property taxes are levied upon all general property in  
9 the State, except property that is exempt from taxation.

10 That's a quote from Section 70.01. Further, Chapter 70 defines  
11 general property as all the taxable real and personal property.  
12 Let me say that again. General property as all the taxable and  
13 real and personal property. The taxation district means a  
14 town, village, or city in which general property taxes are  
15 levied and collected.

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

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

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

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

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

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

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

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

1 Attorney Berg, will you draft the order?

2 MR. BERG: Yes, Your Honor.

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

5 MR. BERG: No.

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

8 MR. CARLSON: No. Not at this time.

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

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

13

14 (Proceedings concluded)

15

16

17

18

19

20

21

22

23

24

25

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

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