

To City of Whitewater Common Council

From Rick Manthe

Date March 5, 2024

Re Special Assessments of Mobile Home Communities

Included for a first reading on the March 5, 2024 Common Council agenda is an ordinance imposing a special assessment on mobile home communities to defray the costs of providing police, fire, and EMS services. This memo explains the ordinance, as well as some legal considerations for the City if it is adopted.

1. Summary of Special Assessment Ordinance.

This ordinance is designed to impose a special assessment on mobile home communities to defray the costs of providing police, fire, and EMS services. Generally, the ordinance requires the City to impose a special assessment if the costs of providing emergency services to a mobile home community are greater than the amount of taxes and fees collected from the mobile home community. If the amount of fees and taxes collected from the mobile home community exceeds the cost of providing emergency services for the previous calendar year, no special assessment is imposed.

The special assessment is calculated by using emergency services calls for service to the mobile home community as a percentage of all calls for emergency services in the City. That percentage is then multiplied by the yearly emergency services expenses to determine the yearly cost for services. If that yearly cost for services to a mobile home community exceeds all taxes and fees collected from the mobile home community, a special assessment is imposed for the difference between revenue and the cost of providing emergency services.

In addition to defraying the cost of providing emergency services, this ordinance would also incentivize mobile home community owners to implement safety strategies to reduce reliance on emergency services. For instance, an owner could increase security by

installing cameras or additional lights in the hopes of reducing the calls for police service. By reducing the number of calls, the special assessment would decrease.

It is possible for the City to impose a special assessment to defray the costs of “educational services,” but this ordinance is limited to emergency services. The ordinance could be amended to include educational services from the school district. However, at this time, we have not gotten a response from the school district requesting to implement an educational service special assessment.

2. Legal Considerations for Ordinance.

While the City has express statutory authority to impose these special assessments against mobile home communities to defray the costs of municipal services, it is still possible there may be a negative levy adjustment for doing so. Below is an explanation of that risk to the City if it adopts this ordinance.

Cities may “levy and collect special assessments to defray the cost of municipal and educational services furnished to a [mobile home] community.” Wis. Stat. § 66.0435(2)(b)2. While this statute seems straightforward, its interaction with the levy limit law is complex.

The risk lies in whether a court would find that the “special assessment” is actually a property tax. If the special assessment were to be classified as a property tax, then a negative levy limit adjustment would be imposed under Wis. Stat. § 66.0602 for the entire amount of the special assessment. There is no legal bright line between a property tax and a special assessment (also referred to as a “fee” or “charge”). “The purpose, and not the name it is given, determines whether a government charge constitutes a tax.” *Bentivenga v. City of Delavan*, 2014 WI App 118, ¶6, 358 Wis. 2d 610, 615, 856 N.W.2d 546, 548. In differentiating between a tax and a charge, the “primary purpose of a tax is to obtain revenue for the government, while the primary purpose of a fee is to cover the expense of providing a service or of regulation and supervision of certain activities.” *City of River Falls v. St. Bridget's Cath. Church of River Falls*, 182 Wis. 2d 436, 441–42, 513 N.W.2d 673, 675 (Ct. App. 1994). For example, the Wisconsin Court of Appeals upheld a charge against all properties within a town designed to recover the entire cost of providing fire protection. The court determined that the charge was a fee because the amount collected would never exceed the cost of providing fire service. *Town of Hoard v. Clark Cnty.*, 2015 WI App 100, ¶13, 366 Wis. 2d 239, 247, 873 N.W.2d 241, 244.

Conversely, the Wisconsin Supreme Court recently determined that a statute allowing municipalities to create transportation utility districts and fund them via “taxation of the property in the district” was a property tax and subject to levy limits. *Wisconsin Prop. Taxpayers, Inc. v. Town of Buchanan*, 2023 WI 58, 408 Wis. 2d 287, 992 N.W.2d 100. In that case, a town created a transportation utility district, which Wisconsin law expressly

authorized. The enabling statute allowed the district to fund its operations via “taxation of property in the district.” Wis. Stat. § 66.0827(2). The Town of Buchanan then created a funding formula derived from a statistical analysis of road usage by various property types within the municipality and divided properties into various use categories. *Id.* at ¶13. However, the Court concluded that the statutory phrase “taxation of the property in the district” was merely another way of saying “property tax.” *Id.* at ¶14. Consequently, despite a specific statutory authorization to impose the tax, the Court concluded the utility charge was a property tax subject to levy limits.

As it applies to mobile home communities, although there is no definitive answer, special assessments or charges imposed for “municipal and educational services” would arguably not qualify as a tax. First, the City is statutorily authorized to impose special assessments to defray the costs of providing “municipal and educational services” to a mobile home community. Unlike a general property tax where the goal is to raise general purpose revenue, these assessments would only be to defray the costs of services actually provided to a particular mobile home community. In other words, the amount is directly tied to a service provided to the mobile home community.

The ordinance, as drafted, is limited in scope to only police, fire, and EMS services. It was designed to limit special assessments to only the cost of providing those services to mobile home communities. The special assessments will never exceed the cost of providing the services, and no special assessments will be imposed if the amount of taxes and fees received from the mobile home community is greater than the costs of providing services to the mobile home community. These factors would weigh in favor of the special assessment not resulting in a negative levy adjustment. However, since there are no court cases specifically interpreting the authorizing statute, it is possible a court could find the special assessment is a property tax and thus impose a negative levy adjustment and require the City to refund to the owner of the mobile home community.