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To City of Whitewater Common Council

From Rick Manthe

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Re Regulation of Mobile Home Communities

### **Introduction**

The City of Whitewater requested an opinion regarding the City's authority to regulate two aspects of mobile home communities:

1. Establishing unit limits in any one mobile home community.
2. Imposing charges or special assessments for municipal or educational services.

As explained more fully below, the City can place a limit on the number of units in any mobile home community. However, there is no clear answer on imposing special assessments for municipal or educational services, but a good argument exists that the City could implement reasonable special assessments.

### **Analysis**

#### **1. Community Unit Limits.**

As it pertains to mobile homes, the City has significant regulatory authority to "[l]imit the number of units that may be located in any one community." Wis. Stat. § 66.0435(2)(b)3. The term "unit" means "a single manufactured or mobile home." Wis. Stat. § 66.0435(1)(j).

The word “community” means “a manufactured and mobile home community.” Wis. Stat. § 66.0435(1)(am). Thus, the plain meaning of this statute grants the City authority to limit the number of homes allowed in communities.

The only limitation is that any unit limit must be in “order to protect and promote the public health, morals and welfare and to equitably defray the cost of municipal and educational services required by persons and families using communities for living.” Wis. Stat. § 66.0435(2). As a result, if the City wishes to establish a limit of the number of units in mobile home communities, the ordinance should make clear that the City finds that the limit will “protect and promote the public health, morals and welfare” and “defray the cost of municipal and educational services” needed to serve mobile home communities.

## **2. Special Assessments for Municipal and Educational Services.**

The City’s authority to impose special assessments for “municipal and educational” services is unclear because there are conflicting plausible statutory interpretations, and even potential levy limit consequences.

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 unique use of terms makes interpreting this section complex.

The Legislature’s use of the phrase “special assessments” is not consistent with the standard definition of the phrase. Typically, “special assessment” means “an amount entered in the tax roll as an assessment against real property to compensate **for all or part of the costs of public work or improvements** which benefit the property.” Wis. Stat. § 74.01(3). (emphasis added). This statutory definition is consistent with the common usage of the term “special assessment” as a tool to recover the costs of physical improvements. It is also consistent with the special assessment process under Wis. Stat. § 66.0703, which establishes the procedure for imposing special assessments against property to recover the costs of public improvements.

However, in the context of the mobile home statute, the term “special assessment” is used as a cost recovery mechanism for “municipal and educational services” as opposed to construction of physical infrastructure. The phrase’s use in the context of providing services is not consistent with how the term is defined in other statutes and its historical usage.

Since the “special assessment” would operate more like a charge for services, it is possible a court might interpret this provision akin to a special charge under Wis. Stat. § 66.0627. Special charges may be imposed “against real property for current services rendered by allocating all or part of the cost of the service to the property served.” Wis. Stat.

§ 66.0627(2). Again, while this is a broad grant of authority, some special charges can lead to a negative levy limit adjustment if used for “garbage collection, fire protection, snow plowing, street sweeping, or storm water management.” Wis. Stat. § 66.0602(2m)(b)1. Charges for those services result in a negative levy adjustment up to the amount spent from the City’s levy in 2013 for providing those services. Consequently, special charges for these services would likely be revenue neutral for the City if imposed solely in mobile home communities. However, services such as police, ambulance, or educational services would not have a negative levy adjustment if a court were to determine the mobile home community special assessment was actually a special charge.

Another risk is that a court determines the special assessment is actually a property tax. “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 previously upheld a charge designed to recover the entire cost of providing fire protection in a town. The court upheld the charge as a fee because the amount of charges 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, 873 N.W.2d 241.

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, ¶13, 408 Wis. 2d 287, 992 N.W.2d 100. In that case, a town designed 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 dividing properties into various use categories. *Wisconsin Prop. Taxpayers, Inc. v. Town of Buchanan*, 2023 WI 58, ¶13. However, the Court concluded that the statutory phrase “taxation of the property in the district” was merely another way of saying “property tax.” 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 if designed correctly. First, 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. The City would need to design the special assessments in such a manner that revenue collected did not exceed the actual costs of providing services to the mobile home community. For instance, a fee for police services could be based on the number of calls for service to a mobile home community in the previous year. A fee for emergency medical services could similarly be based on higher call volume than other areas of the community experience.

As explained above, there is risk with imposing special assessments against mobile home communities. If a court were to find these special assessments were actually a tax, then the City would lose a portion of its shared revenue equal to the amount of imposed special assessments for exceeding the levy. Additionally, a mobile home community operator may have a claim that the special assessments violate the Wisconsin uniformity in taxation requirement. Thus, there is risk associated with pursuing special assessments for mobile home communities.

### **Conclusion**

The City has broad authority to establish regulations governing mobile home communities. The City has express statutory authority to establish unit limits in mobile home communities. Moreover, the City may impose special assessments against a mobile home community to defray the costs of municipal and education services, but there is risk that those special assessments could have negative levy limit effects.