STATE OF WISCONSIN
SUPREME COURT

GREENWALD FAMILY LIMITED PARTNERSHIP
And
DARWIN GREENWALD,

Plaintiffs-Appellants-Petitioners,

v.

Appeal No. 2021AP69-FT
Circuit Court No. 20-CV-494

VILLAGE OF MUKWONAGO,

Defendant-Respondent.

APPEAL FROM A FINAL ORDER
ENTERED ON DECEMBER 4, 2020
IN CIRCUIT COURT FOR WAUKESHA COUNTY
THE HONORABLE LLOYD V. CARTER, PRESIDING

BRIEF OF PETITIONERS

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

Statutes

Case Law

ISSUE PRESENTED FOR REVIEW

1. Did the service of the Notice of Appeal required by Wis. Stats. § 66.0703(12) on the Attorney of record for the Village, who had previously admitted service of the underlying summons and complaint in the case, satisfy the requirement to serve written notice of appeal on the Village clerk?

The Circuit Court determined impliedly that the clerk had to be personally presented with the Notice of Appeal document in order for the Village Clerk, and thus the Village, to be served with the Notice of Appeal. This was contrary to the rule of Wis. Stats. § 801.14(2) which requires that filings shall be served on a party's counsel of record, in particular once service of the jurisdictional document, the summons and complaint, has been served on the party.

Both the Circuit Court and the Court of Appeals presumed incorrectly that to "serve" a document may only mean physically present the document to the Clerk. That is not required or correct under any statute. Physical in-person presentment of the documents is only one of several methods by which to "serve" a document. However, because of this mistaken presumption, both the lower courts started their analysis with the belief that Petitioner had conceded that the clerk was not served. That was incorrect, the service was delivery to the Village's, and thus the Clerk's, attorney of record in the matter.

The issue is whether the Special Assessment Statute, Wis. Stats. § 66.0703(12) clearly and unambiguously requires in-person physical presentment of a document entitled Notice of Appeal as the only acceptable method of serving a Notice of Appeal

under that section. Its plain language certainly does not. And this Court's previous decisions show both that the statute should be construed to preserve claims and further that Petitioner's service was fully appropriate in this case.

STATEMENT OF THE CASE AND THE FACTS

Plaintiff-Appellants-Petitioners Greenwald Family Limited Partnership and Darwin N. Greenwald (hereinafter "GFLP") sought to challenge a special assessment adopted by the Village affecting two of their properties. The Village finalized the resolution adopting the special assessment on December 18, 2019. *See Appendix at p. 4 Special assessment resolution 2019-50 noting date of resolution.* The Village through the Village Clerk provided the statutory notice of the adoption and publication of the resolution on January 16, 2020. *See App at p. 4.*

GFLP filed its action in circuit court challenging the special assessment on March 17, 2020. *See Record at Doc. No. 2.* This was timely filing as it was well within 90 days of the date of the January 16, 2020 publication as well as being within 90 days of the adoption in December. As appropriate, GFLP then sought an admission of service of the summons and complaint from the Attorney for the Village. *See App at p. 8 – email to Attorney Blum.* The parties had an ongoing court action at the time and thus GFLP and undersigned were aware that the Village was represented by an attorney, indeed both the primary attorney and outside counsel. The communications regarding seeking the admission of service were delivered to both attorneys and to the Clerk, Ms. Dykstra. *See App, p. 8 – March 18, 2020 email.* Soon thereafter the Village

attorney, Mr. Blum, agreed to admit service in an email to counsel. *See App at p. 8. March 23, 2020 email.* He indicated that those documents should be provided to him. *Id.* He then provided a signed admission of service noting that service was admitted on March 23, 2020. *See App 9-10.* This is significant and required GFLP, when acting through undersigned, to heed the requirement in Wis. Stats. § 801.14(2) and "serve," meaning deliver in appropriate form and manner, any subsequent "notices or papers," to the Village's attorney.

Thereafter, on April 9, 2022 GFLP by its attorney delivered to the Village Attorney the second document in the case, which is the Notice of Appeal. This was delivered to attorney for the Village along with the required Bond Amount of $150.00. *See App 11-14.* This was delivered by email and also regular U.S. Mail. *See App at 11-12.* The Notice of Appeal document was directed to the Clerk. *See App at 13.* The transmittal letter was addressed to the Village attorney and copied to outside litigation counsel. *See App at 12.* In the transmittal letter, undersigned explained that "I have enclosed a Notice of Appeal to be provided to the Clerk of the Village in accordance with Wis. Stats. § 66.0703(12)." Undersigned also asked if the Village Attorney had any objection to the filing. *Id.*

There is no dispute about these facts. Further, there is no dispute that the summons and complaint was timely filed and served within the required 90 days of the Village resolution on January 16, 2020. And that the subsequent "Notice of Appeal" was properly delivered within 90 days of January 16, 2020 to the Village's legal counsel, who had already accepted and admitted service of the jurisdictional

document, the summons and complaint. GFLP did not deliver the Notice of Appeal to the Clerk for the Village but instead directed and delivered those documents to the attorney for the Village following the requirement to do so in Wis. Stats, § 801.14(2). *See App 11-14.*

The Village Attorney did not indicate any objection to the delivery of the Notice of Appeal to his office. However, several weeks later, the Village through its outside counsel filed a motion to dismiss. The motion claimed that under Wis. Stats. § 66.0703(12) GFLP had not "served" the Clerk by delivering the Notice of Appeal to her attorney and therefore GFLP's claim had to be dismissed. *See Record at Doc. No. 12.* While the Village has not actually asserted as such in its briefing, its argument apparently is that the Notice of Appeal had to be personally presented to the Village Clerk in order to be considered "served." There is no such language or requirement stated in Wis. Stats. § 66.0703(12).

After briefing on the Village's motion the Circuit Court held a hearing on November 17, 2020. The Circuit Court agreed with the Village and ordered the case dismissed. *See App at pp.15-29.*

The case was appealed and the Court of Appeals affirmed. The Court of Appeals misstated GFLP's argument in certain respects. The Court's primary reasoning was as follows:

> The plain text of WIS. STAT. § 66.0703(12) requires a party to accomplish service of a written notice of appeal upon the *clerk* within ninety days. It is undisputed that Greenwald did not do so. Greenwald's failure to comply with the statute required dismissal of his Complaint. "[A]n appeal under WIS. STAT. § 66.0703(12) is the 'sole remedy' of a property owner aggrieved by a

> special assessment[,]" ***Emjay***, 333 Wis. 2d 252, ¶¶31, 36, and our cases require strict compliance with the terms of § 66.0703(12)(a), *see* ***id.***, ¶30 (citation omitted). Further, *the Village clerk is not and never was a party to Greenwald's action. As such, Greenwald's reliance on WIS. STAT. § 801.14(2) is misplaced*. Accordingly, the circuit court correctly dismissed the action.

See Court of Appeals decision at Appendix at pp A-1 to A-3 esp. at A-3 (emphasis added).

The Court of Appeals notes that service of a written notice of appeal must be accomplished within 90 days. The Court claims that it is "undisputed that GFLP did not do so." That is incorrect. What is undisputed is that GFLP did not *deliver* a copy of the Notice of Appeal to the Village Clerk. But that is not the same as failing to *serve* the Clerk. This fallacy has permeated this matter since the outset.

The meaning of and more precisely how one must or may execute service on the Village Clerk is not explained in Wis. Stats. § 66.0703(12). All the participants in this matter, the Courts and the attorneys for the parties, it is safe to say, have been trained in the law and thus have a background understanding that to "serve" *often* means to present or deliver the subject document in person to the appropriate recipient. However that does not mean, (i) that physical in-person delivery is the only way to serve a document – it clearly is not, nor (ii) that a reasonable non-attorney would know that is what was implied by the term "serve."

This issue has been discussed in the briefing, but it is worth noting that an individual property owner and taxpayer who wanted to challenge a special assessment without having to hire legal counsel would very likely be at a loss on what "serve" means in Wis. Stats. §66.0703(12) based only on the "plain" language of that section.

That reasonable property owner and property tax-payer might well mail the document certified mail. Or perhaps deliver it themselves. Or maybe they would deliver it to the Attorney for the Village. All these would be flawed and fatal to their claim under the logic argued for by the Village and adopted by the decisions below.

As part of its decision the Court of Appeals stated that "the Village clerk is not and never was a party to Greenwald's action." This observation is the basis for the Court of Appeals summary rejection of the requirement under Wis. Stats. 801.14(2) that service on a represented party "shall" be made on its attorney. The Court of Appeals observation also appears to create a new role for municipal clerks in special assessment actions, or at least remove from them their status as the official representative of the municipality. It also suggests that a property tax payer should name the Clerk as an express and separate party to a special assessment challenge though that does not make sense given the overall purpose of the statute, which is to provide Notice to the Village through its official record keeper, the Clerk.

The Court of Appeals' reasoning in this respect exempts parties who pursue special assessment challenges under § 66.0703(12) from the requirements of Wis. Stats, §801.14(2). However, the Clerk is the representative of the municipal party. Indeed the statute in several spots refers to the "clerk of the City, Town or Village." *See e.g.* Wis. Stats. § 66.0703(12). It is inconsistent or at least unusual to *require* service on the attorney for a represented party under Wis. Stats. §801.14(2) in almost every other circumstance but find that it is not required, and indeed inadequate, when service on the "clerk" of the party is called for in the procedural statute at issue.

Further facts will be noted as appropriate below.

ARGUMENT

I. Standard of Review.

The Courts below made legal determinations based on undisputed facts. The determination was the interpretation Wis. Stats. § 66.0307(12). Specifically, what is required under the language, "The person appealing shall serve a written notice of appeal upon the clerk of the city, town or village …" This Court's review is *de novo*. *See Emjay Inv. Co. v. Village of Germantown*, 333 Wis.2d 252, 263 (2011); *Mayek v. Cloverleaf Lakes Sanitary Dist. No. 1*, 238 Wis.2d 261, 266-67 (Ct.App.2000).

II. Delivering the Notice of Appeal to the Village Attorney, who had accepted service of the jurisdictional document (the summons and complaint) was service on the party-defendant and its official representative, the Village Clerk.

Petitioner GFLP served the Village Clerk by emailing and delivering the written notice of appeal to the Village Attorney. *App at 12.* For the Village to continue to argue that the Village Clerk was not served is confusing to the point of frustration. The Village fails to confront the key ambiguity in the case, which is what does "serve" mean in Wis. Stats. § 66.0703. As noted, at the time of the delivery of the Notice of Appeal to the Village Attorney, the Village Attorney had previously accepted service of the underlying summons and complaint that initiated the action. *App 9-10.* The Village Attorney accepted service and admitted service for the Village on March 23, 2020. *App 10.*

Subsequent to that, undersigned on behalf of the Appellants served the Notice

of Appeal on the Village Attorney by mail and email on April 9, 2020. *App 11-14.* There is no dispute about these facts.

As described in the statute, the Notice of Appeal is a separate action from the initiating pleading – the summons and complaint. This is a result of a change in the statute several years ago. As a result of that change the process for initiating a challenge under Wis. Stats. § 66.0703(12) is not explicitly described in the statute. The decisional law makes clear that it begins with serving a summons and complaint in circuit court. This was recognized by the Court of Appeals in *Mayek v. Cloverleaf Lakes Sanitary District*, which ruled that filing and service of a summons and complaint in circuit court to commence the action was the equivalent of filing of the Notice of Appeal called for by the statute. *Mayek*, 238 Wis.2d 261, 269-70. In an earlier case, the Court of Appeals had determined that the circuit court filing should come first. *Outagamie County v. Town of Greenville,* 233 Wis.2d 566, 575 n. 3 (Ct.App. 2000).

Thus, in this case the Summons and Complaint, which is the jurisdictional document, was properly and timely filed first. It was then properly served on the Village by delivering the authenticated Summons and Complaint to the Attorney for the Village and asking whether he would admit service on the Village. The Village Attorney admitted service as was appropriate.

Then, as contemplated by the statute, Appellant served the Village Clerk through undersigned Counsel preparing and delivering (i.e. serving) the Notice of Appeal and appropriate bond amount to the attorney for the record for the Village.

App 11-14.

The language of § 66.0703(12) at issue calls for service of a written notice of appeal upon the clerk:

> (12)(a) A person having an interest in a parcel of land affected by a determination of the governing body, under sub. (8)(c), (10) or (11), may, within 90 days after the date of the notice or of the publication of the final resolution under sub. (8)(d), appeal the determination to the circuit court of the county in which the property is located. The person appealing ***shall serve a written notice of appeal upon the clerk of the city, town or village*** and execute a bond to the city, town or village in the sum of $150 with 2 sureties or a bonding company to be approved by the city, town or village clerk, conditioned for the faithful prosecution of the appeal and the payment of all costs that may be adjudged against that person. The clerk, if an appeal is taken, shall prepare a brief statement of the proceedings in the matter before the governing body, with its decision on the matter, and shall transmit the statement with the original or certified copies of all the papers in the matter to the clerk of the circuit court.

See Wis. Stats. § 66.0703(12) (emphasis added)

"Serve" is not defined in Wis. Stats. § 66.0703 or elsewhere in the statutes that undersigned could locate. However, Wis. Stats. § 801.14 controls service of papers on a party represented by an attorney after the filing of the summons and complaint.

> (1) Every order required by its terms to be served, ... and every written notice, appearance, demand, offer of judgment, undertaking, and similar paper shall be served upon each of the parties.
>
> (2) Whenever under these statutes, service of pleadings and other papers is required or permitted to be made upon a party represented by an attorney, ***the service shall be made upon the attorney unless service upon the party in person is ordered by the court.*** Service upon the attorney or upon a party shall be made by delivering a copy or by mailing it to the last-known address, ...

See Wis. Stats. § 801.14(1) and (2). (emphasis added).

There was no order of the Court in this matter requiring delivery upon the party

– the Village Clerk - in-person. Thus, pursuant to Wis. Stats. § 801.14(2) Appellant and its undersigned counsel were required to serve the Village's attorney. There was no other manner provided for GFLP to serve the Village Clerk than by serving the Village's, and thus the Village Clerk's, Attorney. In addition, and given the unusual process that currently exists in the statute, undersigned sought the Village Attorney's response as to whether the Village would have any objection to service on the Village Clerk through delivery to his office of the Notice of Appeal. *App 12.* Undersigned could have hired a process server and taken the more elaborate and costly route of presenting the Notice of Appeal in person to the Clerk had the Village Attorney indicated that was the Village's view of what the law required. Without that, as a party represented by an attorney, GFLP was bound to interact with its opposing parties' attorney, which is the process that was followed.

III. The Special Assessment appeal provisions are not clear and obvious as to the manner of affecting service to initiate the appeal.

The Village argued below that, "Wis. Stats. § 66.0703 … creates a statewide policy for adjudicating special assessments through a simple, ordinary and uniform way to commence proceedings for review. The Village then accused GFLP of creating and "end around" by creating a new procedure.

This is erroneous. GFLP followed the procedures carefully given that the attorney for the Village had admitted service of the underlying summons. The Village's arguments below in effect seek to punish GFLP - and the lower courts' rulings have affirmed that approach - for being more careful and indeed "stricter." In

fact it is the Village's suggested outcome that creates an exception and inconsistency by carving out an appeal under § 66.0703(12) as apparently the only civil court action or special proceeding that is exempt from the service rules in Wis. Stats. § 801.14(2).

Initiating a circuit court challenge to a special assessment – that is, the precise actions one must execute to do so - is not at all clear based on a simple and plain review of the language in Wis. Stats. § 66.0703(12). GFLP determined that a summons and complaint was required to obtain jurisdiction in the circuit court by reviewing the caselaw. *See citations noted above.* That document was thus properly and timely filed first. *See Doc. No. 2 Summons and Complaint.* It was then *served* on the Village. That service was accomplished by the Village's attorney admitting and accepting service. *See App at pp 8-10.*

GFLP then prepared its notice of appeal and "served" that on the Village Clerk. How to "serve" the notice of appeal is ***not*** specifically addressed in Wis. Stats. § 66.0703(12). "Serve" is not defined in Wis. Stats. § 66.0703, or ch. 66 generally, or anywhere in the statutes that undersigned could locate. Thus, GFLP did what it should have done by referring to the rules that govern civil actions in the circuit court. A review of those statutes shows that because the notice of appeal appears to be a separate action/document that comes after the summons and complaint, GFLP was required to follow the express requirement in Wis. Stats. § 801.14(2), and *serve* the Village Clerk by *service* on the Village's attorney.

The Village has conceded in its filings below, as the caselaw explains, that GFLP followed the property sequence, filing the summons and complaint in circuit

court first, and then serving the notice of appeal on the clerk. *See Outagamie County v. Town of Greenville*, 233 Wis.2d 566, 574-75 and n.3 (Ct.App.2000). The Village's argument below, which were in effect adopted by the lower courts, comes down to the following: Even though Wis. Stats. § 801.14(2) requires that the attorney for a represented party be served with all documents subsequent to the summons and complaint- as was admittedly done here – somehow that provision does not require what it's plain language clearly does, in fact, require.

The Court of Appeals approach to this was to reason that the clerk is not a "party" and so the service requirement of Wis. Stats. § 801.14(2) do not apply. That is inaccurate as the Clerk is a part of the party at issue, the Village. The Court of Appeals suggests that the requirement to serve the Village Clerk should be viewed as something different than serving the party in the court action that is initiated under and allowed by Wis. Stats. § 66.0703. This approach would create a very confused situation but also does not answer the underlying question of what "serve" means and requires in § 66.0703(12).

The underlying cause for the somewhat disjointed process that is only minimally explained in the current version of Wis. Stats. § 66.0703 appears to be that the previous statute required the initiation of a special assessment appeal by service of a notice of appeal on the clerk of the municipal party. The statute was changed to adopt the more modern approach consistent with the general rules of civil procedure requiring the initiation of a judicial action – a challenge to a special assessment – by first filed in circuit court. That is shown in the language of the current statute, which

requires "appeal to the circuit court within 90 days."

However, even under the older language, filing in circuit first was determined appropriate. The Court of Appeals explained the proper process under the older statutory language in *Outagamie County v. Town of Greenville*, 233 Wis.2d 566 (Ct.App.2000). In that case the Court of Appeals ruled that an aggrieved property owner may file its appeal in circuit court first and then serve the municipal clerk. That process has been changed by the current language, which does direct the appeal to be filing circuit court. *See* Wis. Stats. § 66.0703(12). In describing the proper procedure the Court explained that, "Certainly, the better procedure is for an aggrieved party to first file its notice of appeal with the circuit court and then serve the notice on the appropriate ***party***—here, the town ***clerk.***" As noted the requirement for the notice of appeal (or equivalent document) being filed with the clerk has changed since *Outagamie County* but the municipal clerk was and remains involved in the appeal procedure because he or she is the representative of the party defendant in this type of "appeal."

IV. The Court of Appeals misapplied this Courts rules regarding construction of procedural statutes.

The Court is facing a procedural issue in this matter – whether GFLP's manner of serving the clerk with a Notice of Appeal document complied with the special assessment statute and the rules of civil procedure – it absolutely did so. As described in its briefing, GFLP took the appropriate and indeed stricter approach to "serving" the Village clerk by following the requirement in Wis. Stats. § 801.14(2) that service on a

represented party "shall be made on the attorney" for the party. The Court should review this matter and reverse the lower courts to clarify that § 801.14(2) applies to challenges under Wis. Stats. § 66.0703(12), as it does in every other similar situation that undersigned could find.

The Court should allow this matter to proceed on its merits of GFLP's claims. GFLP is seeking to challenge an outrageously faulty special assessment being imposed against them by the Village. The assessment imposes property taxes over 10 times the amount it imposes against other affected properties. *See Doc. No. 2 Complaint at ¶ 14-15.* It also imposes the assessment against property that currently lies in the *Town* of Mukwonago not the Village, another error. *Id.* And as set forth in the Complaint GFLP receives no benefit from the infrastructure for which the Village is seeking reimbursement. *Id. at ¶ 9-12*

The Village's argument in this matter have avoided the main issue presented and have created confusion. One particular problem with the Village's arguments below is to suggest that GFLP was just sort of "willy-nilly" delivering the Notice of Appeal document to the Village attorney without heeding the language in the statute. The argument suggest that this would create a problem because future property owners challenging special assessments would then have what the Village terms and "end around" of the required process by being allowed to deliver the Notice of Appeal document to the municipal Attorney. But that argument is a strawman. Mainly because that is not what happened in this case, as the facts and discussion above clearly show. Here, GFLP was more careful in first seeking an admission of service by

the Defendant party – the Village – by contacting its attorney directly. The Village by its attorney admitted service. Thereafter, GFLP proceeded under Wis. Stats. § 801.14(2) and served the Village Clerk but serving her and the Village's Attorney. In a situation where there is no attorney known to a property owner to be representing the municipality, or where the attorney cannot admit service, then the Clerk would be the proper recipient of the Notice of Appeal for the defendant party. That is not the situation here. The Village attorney admitted service. He was then required to accept delivery of future filings as service upon his client and also communicate those documents and information to that client. No problems will ever arise from the process GFLP followed assuming that the Village and its attorney also follows what are very well-established and basic rules of ethical practice in the rules of civil procedure. That Village's failure to do so in favor of a highly technical form-over-substance approach has created this dispute.

As explained above, GFLP properly followed the requirements in Wis. Stats. § 66.0703(12) and § 801.14(2) because the attorney for the Village had affirmatively admitted and accepted service of the summons and complaint. The Court should confirm that § 801.14(2) sets forth the proper process for service on the Village Clerk under the circumstances in this matter. Doing so will do nothing to undermine the consistency and uniformity of the special assessment challenge statute. Nor will it in any way affect the ability of municipalities and their clerks to respond to the merits of GFLP's current challenge under that provision.

V. There is no conflict between the relevant statutes.

The Village argued below that, "Section 66.0703 and § 801.14 conflict on their face" and that "Wis. Stat. § 66.0703 is the more specific statute because it exclusively governs the appeal of a special assessment, whereas Wis. Stat. § 801.04 governs general civil procedure over all sorts of disputes."

But the fact that §801.14(2) governs "all sorts of disputes" does not in any way mean it conflicts with Wis. Stats. § 66.0703(12). The Village struggled below to highlight the actual conflict probably due to the fact that there is no conflict. The Village responded that applying § 801.14(2) would render the "explicitly" clear language in Wis. Stats. § 66.0703(12) meaningless surplusage. It did not identify that language but can only be referring to the word "serve." This argument has two obvious faults.

First, "serve" which is not defined, is not "explicitly clear" language. It is not even explicitly clear to experienced attorneys much less reasonable citizens reading the statutes. It is thus manifestly ambiguous because "serve" does not always and only mean in-person delivery.

Secondly, even if "serve" does contemplate in-person delivery under other statutes, that would not negate or conflict with the requirement in Wis. Stats. § 801.14(2) that service on a represented party of anything except the initiating summons *shall* be made by service on its attorney.

As described in GFLP's briefing below, the duty of the court in applying statutes is to harmonize them if possible, not to find a conflict where none exists. *See*

City of Milwaukee v. Kilgore, 193 Wis.2d 168, 184 (1995) (In construing statutes that are seemingly in conflict, it is our duty to attempt to harmonize them, if it is possible, in a way which will give each full force and effect."). The two statutes at issue here are easily harmonized by allowing service under the procedure mandated by Wis. Stats. §801.14(2), which requires serving the party's attorney of record. It is noted that Wis. Stats. § 801.14(2) directive applies to service on a represented party in all circumstances under the Wisconsin *statutes*. It is not limited to applying only to civil actions directly addressed by the rules of civil procedure in chaps. 801 to 847. *See* Wis. Stats. § 801.14(2).

There is no good explanation or reason why serving the Village Clerk and its attorney is not sufficient in a case like this. Serving the attorney with the jurisdictional document, the summons and complaint, was perfectly appropriate. The Village admitted service. This was accomplished by the Attorney for the Village admitting service on behalf of the Village. If the attorney was authorized by the Village to accept service of the summons and complaint, why then would serving a subsequent notice of appeal not also be considered served if delivered to the same attorney of record that already admitted service of the underlying summons and complaint?

This confused process makes no sense. It is unnecessary and not at all required by any reasonable of for that matter strict interpretation or construction of the plain language of Wis. Stats § 66.0703(12). And as the Courts have ruled in special assessment cases, ambiguous procedural language in the special assessment statute should be construed to allow challenges on the merits. *See Outagamie County v. Town*

of Greenville, 233 Wis.2d 566, 573 (Ct.App.2000) ("[p]rocedural statutes are to be liberally construed so as to permit a determination upon the merits of the controversy if such construction is possible."). This Court has confirmed the same as noted in that case:

> Our supreme court has held that "where an ambiguity exists, '[p]rocedural statutes are to be liberally construed so as to permit a determination upon the merits of the controversy if such construction is possible.' " *DOT v. Peterson*, 226 Wis.2d 623, 633, 594 N.W.2d 765 (1999) (quoting *Kyncl v. Kenosha County*, 37 Wis.2d 547, 555–56, 155 N.W.2d 583 (1968)). The *Peterson* court further held that "where a procedural statute does not provide specific direction for compliance, the ambiguity is to be resolved in favor of the [landowner]."

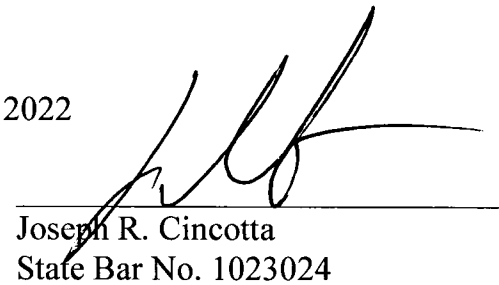
See Outagamie County v. Town of Greenville, 233 Wis.2d 566, 573 (Ct.App 2000).

There is ambiguity in the language and the procedure currently called for under Wis. Stats. § 66.0703(12). GFLP's actions to properly initiate the special assessment challenge and serve the subsequent Notice of appeal were proper and certainly reasonable under the language of the statute as further informed by the multiple cases that have interpreted it in similar circumstances.

CONCLUSION

For the above reasons, Petitioner respectfully requests that the Court reverse the decision of the lower courts and remand this matter so that GFLP may proceed to the merits of its special assessment claim.

Dated this 30th day of December, 2022



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CERTIFICATIONS PURSUANT TO WIS. STATS. § 809.19(2) and (8).

I certify that this Brief conforms to the rules contained in s. 809.62(4) and 809.19(8) (b) and (d) for a Brief produced with a proportional serif font. The length of this brief is 5138 words.

Joseph R. Cincotta

I hereby also certify that filed with the Brief in this matter as a part of the Brief is an appendix that complies with s. 809.62(2) and that contains: (1) a table of contents; (2) relevant trial court record entries; (3) the findings or opinion of the trial court; and (4) portions of the record essential to an understanding of the issues raised, including oral or written rulings or decisions showing the trial court's reasoning regarding those issues and the Court of Appeals decision.

I further certify that if the record is required by law to be confidential, the portions of the record included in the appendix are reproduced using first names and last initials instead of full names of persons, specifically including juveniles and parents of juveniles, with a notation that the portions of the record have been so reproduced to preserve confidentiality and with appropriate references to the record.

Joseph R. Cincotta

I certify that I have submitted an electronic copy of this petition, excluding the appendix, if any, which complies with the requirements of s. 809.62(4)(b) and 809.19(12) and that said electronic brief is identical in content and format to the printed form of the petition filed as of this date.

Joseph R. Cincotta

I further certify that an appendix has been filed with this brief and also as a separate electronic document in accordance with s. 809.19(12) and (13) and that the content of the electronic copy of the appendix is identical to the content of the paper copy of the appendix.

Joseph R. Cincotta