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SUPREME COURT

No. 2021AP69

In the Supreme Court of Wisconsin

GREENWALD FAMILY LIMITED PARTNERSHIP AND
DARWIN GREENWALD,
PETITIONERS,

v.

VILLAGE OF MUKWONAGO,
RESPONDENT.

On Appeal from an Order of the
Waukesha County Circuit, Case No. 2020CV494
The Honorable Lloyd v. Carter, Presiding

BRIEF OF RESPONDENT

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STATEMENT OF ISSUE

This Court has said that Wis. Stat. § 66.0703(12), the statute governing the procedure for challenging special assessments, requires strict compliance. Section 66.0703(12)(a) requires a person challenging a special assessment to “serve a written notice of appeal upon the clerk of the city, town or village.” Petitioner (“GFLP”) did not do so. Instead, GFLP filed a summons and complaint, then asked the Village’s General Counsel (who represents the Board of Trustees) to accept service of the summons and complaint on behalf of the governing body that passed the special assessment, and then several weeks later GFLP sent an email package to General Counsel with the “Notice of Appeal.” General Counsel neither admitted service of the Notice of Appeal nor made any assertion that he was representing the Clerk, nor is the Clerk a party to the action. Did GFLP strictly comply with the requirement that a person “serve a written notice of appeal upon the clerk of the city, town or village?”

Both the circuit court and court of appeals answered, “No.”

ORAL ARGUMENT AND PUBLICATION

On January 11, 2023, this Court notified the parties to this action that oral argument will be held on Monday, February 20, 2023 beginning at 9:45 a.m.

STATEMENT OF CASE

The Village of Mukwonago Board (“Village”) passed a special assessment by way of Resolution 2019-050 on December 18, 2019. (R. 3.)¹ The Resolution sought to obtain funds through a special property tax against twelve properties, including GFLP’s two parcels of land, within the special assessment district. The purpose of the special property tax is to repay the Village for costs incurred in developing a roadway and utility improvements along Chapman Blvd and associated properties.² (R. 2 at ¶ 7.) GFLP filed a summons and complaint challenging the special assessment on March 17, 2020. (R. 2.)

On March 18, 2020, GFLP emailed general counsel for the Village (“General Counsel”), providing authenticated copies of the summons and complaint, and asked General Counsel if he would be willing to accept service of the same. (R. 21 at pg. 1.) On March 23, 2020, General Counsel accepted service of the summons and complaint through an admission of service on behalf of the governing body that passed the special assessment. (R. 21.)

Nineteen days after General Counsel admitted service of the summons and complaint, on April 9, 2020, GFLP sent an email to General Counsel stating, “Attached is a copy of a notice relative to the Special Assessment matter. This is also being mailed to your office by

¹ All Record (R.) citations are to the records Index.

² The Circumstances relating to the special assessment will be explained later in the brief.

regular mail.”³ (R. 10.) The attachment within the April 9 email contained a letter, stating the following in pertinent part:

Regarding this matter, I have enclosed a Notice of Appeal to be provided to the Clerk of the Village in accordance with Wis. Stat. 66.0703(12). Also a check in the amount of \$150,000 to serve as a bond for costs. You have already admitted service of the actual court filing and so I gather that the Clerk has **actual notice** of GFLP’s appeal of the special assessment. Please let me know if the Village has any objection to this filing. Or requires further action by Plaintiff to be in compliance with the bond requirement.

(*Id.*) (emphasis added).⁴

General Counsel did not respond to this email, nor did he admit service of the Notice of Appeal on behalf of the Village Clerk. Further, General Counsel never became the attorney of record in the case, nor did GFLP provide a copy of the Notice of Appeal to the Clerk in any manner.

On May 6, 2020, the Village appeared in the lawsuit and responded with a Motion to Dismiss the complaint, arguing that GFLP never served the Notice of Appeal upon the Clerk as required by Wis. Stat. § 66.0703(12)(a). (R. 11, 12.) The circuit court issued a briefing schedule which set a deadline for GFLP to respond by June 26, 2020. (R. 13.) GFLP failed to file a response brief on this date. After 10 days of GFLP failing to file a response, the Village requested that the court enter an order dismissing the complaint. (R. 15, 16.) The court entered such an

³ GFLP also sent a carbon copy to Attorney Remzy Bitar. However, Attorney Bitar was litigation counsel for the Village in GFLP’s separate lawsuit in federal court (involving federal civil rights claims and a tortious interference claim concerning separate land) and had no involvement in the special assessment, had no discussions with GFLP relating to the case at hand, had not yet been retained in the case, and had not filed a notice of appearance at that time.

⁴ The date of the letter (April 8, 2019) is an inadvertent oversight by GFLP.

order and dismissed the case on July 13, 2020. (R. 17.) After realizing its 17-day delinquency and upon seeing the dismissal Order, GFLP wrote to the court, responding to the Motion to Dismiss and requested leave to amend the scheduling order in addition to providing a multitude of reasons for its delinquency. (R. 18, 19.)

The court granted GFLP leave to file its response brief. After allowing Petitioner an extension of time to file a response and becoming apprised of the legal issues, the court dismissed the Complaint, on its merits, concluding that Wis. Stat. § 66.0703(12)(a) requires the Notice of Appeal to be served upon the Clerk, which GFLP failed to do:

So what we have here is the plaintiff did file the summons and complaint in the circuit court, arranged with (General Counsel) to accept service of process of those documents on behalf of the Village, and then he followed up with the notice document. The statute specifically requires that the person appealing shall serve a written notice of appeal upon the clerk of the city, town, or village and then execute the bond. That did not occur in that fashion in this case here that we're -- we have before the Court today.

(R. 46, Transcript at pg. 22.)

Uniformity, consistency, and compliance with the procedural rules are important aspects of the administration of justice. If the statutory prescriptions are to be meaningful, they must be unbending... But the fact of the matter is the statute requires service of written notice of appeal on the clerk.

(*Id.* at pgs. 23-24) (*Quoting Emjay Inv. Co. v. Vill. of Germantown*, 2011 WI 31, ¶ 3, 333 Wis. 2d 252, 797 N.W.2d 844).

The court also emphasized the importance of serving the Clerk under the statute because the statute requires the Clerk to conduct specific tasks upon being served and because the statute is a context-specific statute governing a special proceeding that requires strict compliance:

The statute, and I think it's important from this Court's perspective in analyzing the statute, then puts requirements on the clerk after notice is served on them, notice of appeal is served. And it says, going further down in subsection (12)(a) to 66.0703, says that 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 certified copies of all the papers in the matter to the clerk of the circuit court. So it puts certain burdens upon the clerk then upon the service of notice of appeal to take action.

(*Id.* at pgs. 17-18.)

The Court, in looking at the various cases that interpret the statute...certainly finds support for the argument from the Village that for these types of proceedings strict compliance with the statutory requirements is paramount. It, at least from what I can discern here, does not appear to be contested that service of the notice of appeal directly to the Village clerk did not occur. Rather, it was transmitted or attempted to be served through the -- to the Village clerk through (General Counsel) as legal counsel.

(*Id.* at pg. 20.)

GFLP then appealed the circuit court's decision. In an unpublished, per curiam decision, the court of appeals affirmed, finding GFLP failed to serve the Clerk as required by § 66.0703(12)(a). Part of the court of appeals' explanation states:

The plain text of Wis. Stat. § 66.0703(12) requires a party to accomplish service of a written notice of appeal upon the clerk... (Petitioner) did not do so. (Petitioner's) failure to comply with the statute required dismissal of his Complaint... 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.

(Doc. 57, Ct. App. Opinion/Decision at pgs. 2-3.)

STANDARD OF REVIEW

GFLP's contentions about whether it complied with Wis. Stat. § 66.0703(12) present a question of statutory interpretation and application of the statute to undisputed facts, which are questions of law that this Court reviews *de novo*. *Nelson v. McLaughlin*, 211 Wis. 2d 487, 495, 565 N.W.2d 123 (1997).

SUMMARY OF ARGUMENT

The sole issue in this case is whether the Village Clerk was served with the requisite Notice of Appeal in accordance with Wis. Stat. § 66.0703. This Court should affirm the lower courts' decisions and determine the Clerk was never served with the Notice of Appeal.

The plain language of Wis. Stat. § 66.0703(12) is clear that "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." GFLP did not personally serve, email, or mail the Village Clerk the Notice of Appeal. In fact, GFLP did not provide the Notice of Appeal in any manner to the Clerk. Instead, GFLP sent an email package to

General Counsel of the Village, which also contained the Notice of Appeal. For nearly 50 years, This Court has stated on a multiple of occasions that strict compliance with Wis. Stat. § 66.0703(12)(a) is required or else a case should be dismissed. Here, GFLP failed to comply with the requirements of the statute and accordingly, the lower courts properly dismissed this action.

In its opening brief, GFLP argues it followed the “stricter approach” of serving the Village Clerk under Wis. Stat. § 801.14(2) by sending a copy of the Notice of Appeal to General Counsel. However, through Wis. Stat. § 66.0703, the Legislature created a statewide uniform procedure for adjudicating special assessments through a simple, ordinary, and uniform way to commence proceedings for review, which this Court has ruled to be a “special proceeding.” Wis. Stat. § 66.0703 and Wis. Stat. § 801.14(2) conflict on their face and, accordingly, the more specific statute governing special proceedings controls. Additionally, Wis. Stat. § 801.14(2) is not applicable because General Counsel serves the Village Board of Trustees, not the Village Clerk; he never informed GFLP that he was representing the Village Clerk in addition to or in lieu of the governing board; nor is the Village Clerk a party to the suit.

Under GFLP’s argument and interpretation, parts of Wis. Stat. § 66.0703(12)(a) would be rendered meaningless and surplusage as there would be no requirement to serve the Village Clerk with the Notice of Appeal. Further, the context, language, purpose, and public policy concerns of Wis. Stat. § 66.0703(12) emphasize that the Clerk is of the utmost importance during the special assessment process and review

thereof (as explained more below) and, accordingly, service of the Notice of Appeal directly upon the Village Clerk is a necessity.

ARGUMENT

I. Under Statutory Interpretation Principles, Wis. Stat. § 66.0703(12)(a) Requires the Village Clerk to be Personally Served with the Notice of Appeal.

It is not disputed by either party that an aggrieved party appealing a special assessment like GFLP must file a summons and complaint and serve the summons and complaint upon the Village. (Petitioner's Brief at pg. 11.) It is also not disputed that a separate action must be served upon the Clerk—a Notice of Appeal. (*Id.* at pgs. 11-12.)⁵ The main contention is how the Notice of Appeal must be served. GFLP contends, contrary to the plain language of Wis. Stat. § 66.0703(12), that the Notice of Appeal can be served upon the Village Clerk via email or mail to General Counsel. However, that is incorrect.

Under basic statutory interpretation principles, Wis. Stat. § 66.0703(12) requires that the Village Clerk be served with the Notice of Appeal. First, the plain language of the statute requires service upon the Village Clerk. Second, challenging special assessments is a special

⁵ GFLP cites to a footnote containing dicta from a court of appeals opinion that interpreted Wis. Stat. 66.60(12)(a) (the predecessor statute to Wis. Stat. 66.0703) for the proposition that first a summons and complaint must be filed, then a Notice of Appeal must be served. *See* (Petitioner's Brief at pgs. 14-15) (*citing to Outagamie County v. Town of Greenville*, 233 Wis. 2d 566, 608 N.W.2d 414 (Ct.App.2000)). The dicta there commented on the sequence of events there. However, the current statute does not require a mandatory sequence as to what must happen first – the Notice of Appeal or the summons and complaint. Rather, a party could first serve the notice of appeal then file the summons and complaint, in either order, or serve both on the same day, so long as service is properly being achieved.

proceeding in which the specific requirements of Wis. Stat. § 66.0703(12) control and, to the extent GFLP looks to Wis. Stat. § 801.14(2), there is thus a conflict between the two statutes on their face; accordingly, Wis. Stat. 66.0703(12) controls because it is the more strict and particular statute governing the appeal from a unique matter like a special assessment. Third, GFLP's interpretation of the statute would make parts of the statute superfluous, which courts avoid. Fourth, the purpose, context, surrounding language, and public policy concerns of the relevant statute proves that serving the Clerk is of the utmost importance.

A. The plain language of Wis. Stat. § 66.0703(12)(a) demands that the Clerk be served with the Notice of Appeal.

The Plain Language of Wis. Stat. § 66.0703(12)(a) requires the Village Clerk be served with the Notice of Appeal. “[T]he purpose of statutory interpretation is to determine what the statute means so that it may be given its full, proper, and intended effect.” *State ex rel. Kalal v. Cir. Ct. for Dane Cnty.*, 2004 WI 58, ¶ 44, 271 Wis. 2d 633, 681 N.W.2d 110. “We presume that the legislature says in a statute what it means and means in a statute what it says there.” *Heritage Farms, Inc. v. Markel Ins. Co.*, 2012 WI 26, ¶ 26, 339 Wis. 2d 125, 810 N.W.2d 465. Statutory language is given its common, ordinary, and accepted meaning. *Kalal*, 2004 WI 58, ¶ 45. “If the meaning of the statute is plain, we ordinarily stop the inquiry. *Id.* “[W]ords that are not defined in a statute are to be given their ordinary meanings.” *Cnty. of Dane v. Lab. & Indus. Rev. Comm'n*, 2009 WI 9, ¶ 23, 315 Wis. 2d 293, 759 N.W.2d 571. Courts consult dictionaries in order to guide interpretation of common, ordinary meanings of words used in statutes that are not

defined. *Id.* However, consulting a dictionary to ascertain the meaning of undefined words in a statute does not mean that those words are ambiguous. *Id.* Statutory interpretation involves the ascertainment of meaning, not a search for ambiguity. *Kalal*, 2004 WI 58, ¶ 47.

Wis. Stat. § 66.0703(12)(a) states:

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.**

(emphasis added).

The plain language of the statute states the Village Clerk shall be served with the Notice of Appeal and after being served with said Notice, the Village Clerk shall prepare a brief statement of the proceedings before the governing body and shall transmit the statement with the original or certified copies to the circuit court. This Court has determined that the word “shall” means that something is mandatory. See *Heritage Farms, Inc.*, WI 26, ¶ 32. Accordingly, it is mandatory for GFLP to serve the Village Clerk.

Next, in accordance with the case law cited above, a dictionary should be consulted to ascertain the meaning of the word “serve” since § 66.0703 does not define it, Chapter 66 does not define it, nor has this Court or the court of appeals defined it in any other case. Some dictionary definitions of “serve” are as follows:

- Black's Law Dictionary (11th ed. 2019) describes “serve” as:
 - To make legal delivery of (a notice or process) e.g., a copy of the pleading was served on all interested parties
 - To present (a person) with a notice or process as required by law⁶
- Britannica describes “serve” in the legal context as:
 - to send or give (someone) official legal papers
 - He served her with divorce papers.
 - The police officer served a summons/writ on him.⁷
- Meriam Webster defines “serve” in the legal context as:
 - to bring to notice, deliver, or execute as required by law
 - to make legal service upon (a person named in a process)⁸
- A simple google dictionary search, which obtains its definitions from Oxford, defines “serve” in the legal context as:
 - deliver (a document such as a summons or writ) in a formal manner to the person to whom it is addressed.

⁶ See *Stroede v. Soc'y Ins.*, 2021 WI 43, ¶ 12, 397 Wis. 2d 17, 25, 959 N.W.2d 305, 309 (Using Black's Law Dictionary)

⁷ <https://www.britannica.com/dictionary/serve>

See *Town of Albion v. Trask*, 256 Wis. 485, 488, 41 N.W.2d 627, 629 (1950); *Albert v. Regal Ware, Inc.*, 6 Wis. 2d 519, 524, 95 N.W.2d 240, 243 (1959) (Both Cases Using Britannica)

⁸ <https://www.merriam-webster.com/dictionary/serve>

See *Teigen v. Wisconsin Elections Comm'n*, 2022 WI 64, ¶ 74, 403 Wis. 2d 607, 655, 976 N.W.2d 519, 543, reconsideration denied, 2022 WI 104, ¶ 74 (Using Webster's)

- he said his lawyer would serve a writ to the multinational corporation within a week
 - deliver a document to (someone) in a formal manner.
 - "they were just about to serve him with a writ" ⁹
- Dictionary.com defines "serve" in the legal context as:
 - "to make legal delivery of" or "to present"¹⁰
- Oxford Learner's Dictionary describes "serve" in the legal context as:
 - To give or send somebody an official document, especially one that orders them to appear in court.¹¹
- Macmillan Dictionary describes "serve" in the legal context as:
 - To officially give someone a legal document that orders them to do something.
 - She was served with a summons to appear in court

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https://www.google.com/search?q=google+dictionary&sxsrf=AJOqlzVoKaeW1KoaKD HG-LEA3CulWttcHw%3A1673369107649&ei=E5a9Y-qaJ8ilptQP7-GrkAc&ved=0ahUKEwiq8PTZub38AhXIkokEHe_wCnIQ4dUDCBA&uact=5&oq=google+dictionary&gs_lcp=Cgxnd3Mtd2l6LXNlcnAQAzIQCAAQgAQQhwIQsQMgQwEQFDIQAQAQgAQQhwIQsQMgQwEQFDIFCAAQgAQyCAGAEIAEELEDMgUIABCABDIFCAAQgAQyBQgAEIAEMgUIABCABDIFCAAQgAQyBQgAEIAEOgQIIxAnOgoIABCxAXCDARBDOhAILhCxAXCDARDHARDRAxBDOgsILhCABBCxAXCDAToI CC4QgwEQsQM6CwgAEIAEELEDEIMBOgQIABBDOggILhDUAhCABDoECAAQAzoHCAAQgAQQCjoKCAAQgAQQhwIQFEoECEYYAEoECEYYAFAAWNwMYPQNaABwAXgAgAFmiAHwCJIBBDE2LjGYAQCgAQHAAQE&scient=gws-wiz-serp#dobs=serve

See *Teigen v. Wisconsin Elections Comm'n*, 2022 WI 64, ¶ 74, 403 Wis. 2d 607, 655, 976 N.W.2d 519, 543, reconsideration denied, 2022 WI 104, ¶ 74 (Using Oxford)

¹⁰ <https://www.dictionary.com/browse/serve>

See *City of Oshkosh v. Kubiak*, 2017 WI App 20, 374 Wis. 2d 337, 346, 893 N.W.2d 271, 275; *State v. Stuckey*, 2013 WI App 98, 349 Wis. 2d 654, 665, 837 N.W.2d 160, 165; *Veto v. Am. Fam. Mut. Ins. Co.*, 2012 WI App 56, 341 Wis. 2d 390, 400, 815 N.W.2d 713, 718 (All Using Dictionary.com)

¹¹ https://www.oxfordlearnersdictionaries.com/us/definition/english/serve_1?q=serve

See Citation above for this Court using Oxford

- The notice must be served upon the tenant and include a legal description of the breach they have committed.¹²

All the above definitions reveal the following: “serve” requires presenting or delivering a legal document directly to someone as prescribed by law. Here, “serve” means the act of delivery of a Notice of Appeal to the Village Clerk as prescribed by Wis. Stat. § 66.0703(12)(a). GFLP admits that “serve” typically means, “to present or deliver the subject document in person to the appropriate recipient.” (Petitioner’s Brief at pg. 8.) Other than this apparent admission of the definition of “serve,” GFLP does not provide any alternative definition for the Court to consider.

Rather, GFLP attempts to escape the most basic pillar of interpreting statutes, which is an ascertainment of the plain meaning of words through their ordinary definitions. GFLP argues a general civil procedure statute controls. GFLP’s interpretation of the statute runs contrary to the established case law of this state when interpreting statutes and runs contrary to the purpose and goals set forth by the Legislature when challenging special assessments, as will be discussed in the next section of this brief.

Other courts around the country have considered giving meaning to the word “serve,” coming to the same result as the Village, the circuit court, and the court of appeals that serve means the formal or ceremonial

¹² https://www.macmillandictionary.com/us/dictionary/american/serve_1
See *Topolski v. Topolski*, 2011 WI 59, 335 Wis. 2d 327, 345, 802 N.W.2d 482, 491 (Using Macmillan Dictionary)

delivery of a legal paper upon its intended target, here the Clerk. Some of these cases are discussed below:¹³

- *Comstock Const., Inc. v. Sheyenne Disposal, Inc.*, 2002 ND 141, ¶ 24, 651 N.W.2d 656, 663:

In construing the ordinary meaning of language in statutes, we have often resorted to dictionary definitions. One dictionary defines “serve” as “a) to deliver (a legal instrument, as a summons) b) to deliver a legal instrument to; esp., to present with a writ.” Webster's New World Dictionary 1301 (2d Coll. Ed.1980). Another dictionary defines “serve” as to “bring to notice, deliver, or execute actually or constructively as required by law: to put into effect (to serve a summons or process is to deliver it, or to read it so as to give notice, or both).” Webster's Third New International Dictionary 2075 (1971). A legal dictionary defines “serve” as “[t]o make legal delivery of (a notice or process) ... [t]o present (a person) with a notice or process as required by law.” Black's Law Dictionary 1372 (7th ed.1999). **Those authorities indicate the plain and ordinary meaning of serve contemplates that a written demand is served within the meaning of N.D.C.C. § 35-27-25 when the demand is delivered and notice is given to the person holding the lien.** (emphasis added and legal citations omitted).

- *Amaya v. Enriquez*, 296 S.W.3d 781, 783 (Tex. App. 2009):

Black's Law Dictionary defines “serve” as (“[t]o make legal delivery of a notice or process” or “[t]o present a person with a notice or process as required by law”). Black's Law Dictionary 1372 (7th ed. 1999). Used broadly, the term “serve” generally refers to the delivery by a party of a document to the proper party in a manner that provides reasonable, sufficient notice.

¹³ When dealing with issues of first impression, this Court will often turn to persuasive authority from other jurisdictions to see how they rule. See *Strozinsky v. Sch. Dist. of Brown Deer*, 2000 WI 97, ¶ 67, 237 Wis. 2d 19, 56, 614 N.W.2d 443, 461. Of course, this Court need not turn to other jurisdictions as the definition of the word “serve” is clear in that it requires delivery upon the Clerk.

- *Rockwood Cas. Ins. Co. v. Uninsured Employers' Fund*, 385 Md. 99, 109–10, 867 A.2d 1026, 1031–32 (2005):

To “serve” is defined as, “[t]o make legal delivery of (a notice or process) ... [t]o present (a person) with a notice or process as required by law....” Black's Law Dictionary 1399 (8th ed.2004). **The term implies actual receipt** (emphasis added).

All the above definitions and case law align with an interpretation of the statute that “serve” requires actual delivery of the Notice of Appeal upon the Village Clerk. Here, GFLP never personally delivered, emailed, or even sent via first class mail the Notice of Appeal to the Clerk. The analysis should end here. The plain and ordinary language of Wis. Stat. § 66.0703(12) requires the Village Clerk to be served with the Notice of Appeal, the statute does not entail some lesser process such as “actual notice” that GFLP alluded to in its email to General Counsel or in its briefs in this case, nor does it incorporate general civil procedure statutes. The Clerk was never served with the Notice of Appeal, and accordingly, GFLP failed to serve the Clerk as is required by the statute.

B. Wis. Stat. § 66.0703(12) is the controlling statute, not wis. Stat. 801.14(2) as GFLP suggests.

GFLP completely ignores the plain language of Wis. Stat. § 66.0703(12) and argues that Wis. Stat. § 801.14(2) is the controlling statute. This is incorrect under the rules of statutory interpretation for a multitude of reasons. First, through Wis. Stat. § 66.0703, the Legislature created a statewide uniform procedure for adjudicating special assessments through a simple and common way to commence a special proceeding. Second, Wis. Stat. § 66.0703(12)(a) and Wis. Stat. § 801.14(2) conflict on their face and accordingly, Wis. Stat. §

66.0703(12)(a), as the context-specific statute of a special proceeding, controls. Third, General Counsel accepted the service of the Summons and Complaint on behalf of the governing body (i.e., Village Board of Trustees), was never asked at the time to accept service of anything else, never asserted that he was representing the Village Clerk and the Village Clerk is not a party to the suit.

i. Through Wis. Stat. § 66.0703(12), the Legislature created a statewide public policy for adjudicating special assessments through a simple, ordinary and uniform way to commence a special proceeding.

“[T]he purpose of statutory interpretation is to determine what the statute means so that it may be given its full, proper, and intended effect.” *State ex rel. Kalal v. Cir. Ct. for Dane Cnty.*, 2004 WI 58, ¶ 44, 271 Wis. 2d 633, 681 N.W.2d 110. This Court has ruled for nearly the past 50 years that the Legislature intended for § 66.0703(12) to be strictly complied with, or else the complaint should be dismissed. Chapter 66 prescribes the method of determination of local affairs and government of cities and villages.¹⁴ “Wis. Stat. § 66.0703(12) provides the exclusive procedure by which an aggrieved property owner may appeal from the municipality's adoption of a final resolution to levy special assessments.” *Emjay Inv. Co. v. Vill. of Germantown*, 2011 WI 31, ¶ 29, 333 Wis. 2d 252, 797 N.W.2d 844. “[T]he policy consideration

¹⁴ See Wis. Stat 66.0101(1) states: “Under article XI, section 3, of the constitution, the method of determination of the local affairs and government of cities and villages shall be as prescribed in this section.” See also *Wisconsin Gas & Elec. Co. v. City of Ft. Atkinson*, 193 Wis. 232, 213 N.W. 873 (1927) (Chapter 66 is composed of over 20 sections, 73 subsections, and many paragraphs, and is a compilation of laws authorizing municipalities generally to do certain things); *In re Incorporation of Portion of Town of Sheboygan*, 2001 WI App 279, ¶ 6, 248 Wis. 2d 904, 637 N.W.2d 770 (Wisconsin Stat. ch. 66 contains the rules regarding municipal law).

behind this rule is to maintain a simple, ordinary and uniform way of conducting legal business in our courts. Uniformity, consistency and compliance with procedural rules are important aspects of the administration of justice. If the statutory prescriptions are to be meaningful, they must be unbending.” *Id.*, ¶ 30 (emphasis added). “A clear reading of the statute ... demonstrates that section 66.60(12)(a) [renumbered as Wis. Stat. § 66.0703(12)(a)] explicitly provides a claimant with the ‘sole remedy’ for any complaint regarding a municipality’s collection of assessments under section 66.60 [renumbered as § 66.0703].” *Id.* ¶ 31 and Wis. Stat. § 66.0703(12)(e)). *See also* Wis. Stat. § 66.0703(12)(e) (“An appeal under this subsection is the sole remedy of any person aggrieved by a determination of the governing body”). “If the statutory requirements for processing an appeal (under Wis. Stat. § 66.0703(12)) are to have meaning, they must be adhered to. Compliance with the statutory provisions prescribing the manner for proceeding in the circuit court serves the public policy of maintaining an orderly and uniform way of conducting court business.” *Aiello v. Vill. of Pleasant Prairie*, 206 Wis. 2d 68, 556 N.W.2d 697 (1996).

In *Atkins v. Glendale*, 67 Wis. 2d 42, 226 N.W. 2d 396 (1975), the Court held that “failure to strictly comply with [66.0703(12)(a)] . . . requires dismissal of the appeal.” Also, in *Bailk v. City of Oak Creek*, 98 Wis. 2d 469, 474, 297 N.W.2d 43 (Ct.App.1980), the Court of Appeals stated that “failure to strictly comply with the express terms of [66.0703(12)(a)] . . . requires dismissal of the plaintiff’s action for lack of subject matter jurisdiction.”

Although dealing with appealing condemnation awards, this very same principle is delineated in *519 Corp. v. State Dep't of Transp., Div.*

of *Highways*, 92 Wis. 2d 276, 284 N.W.2d 643 (1979). In *519 Corp*, this Court grappled the proper notice that must be provided in a condemnation proceeding under Wis. Stat. § 32.05, which at the time, required a petitioner to serve a notice of appeal from a condemnation award by either personal service or certified mail. *Id.* However, the aggrieved party in that case provided the document via ordinary first-class mail. The recipient of the notice admitted that it received actual notice of the appeal in a timely manner. *Id.* However, this Court determined that actual notice was not enough, and that the procedure outlined in the statutes needed to be strictly complied with, in that case, personal service or certified mail:

To dismiss the appeal because the notice which was admittedly received was sent by ordinary first class mail rather than by certified mail is harsh. The State urges us to treat the difference between certified and ordinary mail as relating to the return of service rather than as relating to the manner of service, and to treat the return of service as an evidentiary rather than a jurisdictional question... This argument is tempting. **Nevertheless, we feel constrained to dismiss the appeal because a key purpose of procedural provisions such as sec. 32.05(10)(a) is to maintain a simple, orderly, and uniform way of conducting legal business in our courts. Uniformity, consistency, and compliance with procedural rules are important aspects of the administration of justice. If the statutory prescriptions to obtain jurisdiction are to be meaningful they must be unbending.** Accordingly we reverse the circuit court's order denying the Corporation's motion to dismiss the State's appeal.

Id. (emphasis added).

As is clear from the abundance of case law from this Court, Wis. Stat. § 66.0703(12) requires strict compliance with the statute. Here, GFLP has not strictly complied with the requirement of serving the

Clerk, and accordingly, the circuit court and court of appeals properly dismissed this case.

ii. Wis Stat. § 66.0703(12)(a) and Wis. Stat. § 801.14(2) conflict on their face and, accordingly, the specific statute governing the special proceeding of appealing special assessments, Wis. Stat. 66.0703(12)(a), controls.

In addition to the fact that the plain language of Wis. Stat. § 66.0703(12)(a) requires service upon the Clerk and that strict compliance with this statute has been deemed necessary by the courts, another reason GFLP's argument fails is because Wis. Stat. § 66.0703(12)(a) is a specific statute that governs the appealing of special assessments, which has been determined to be a special proceeding, whereas Wis. Stat. § 801.14 is a general civil procedure statute governing all sorts of proceedings. Because Wis. Stat. § 801.14(2) and Wis. Stat. § 66.0703(12)(a) conflict, the specific statute controls, here Wis. Stat. § 66.0703(12)(a).¹⁵

“Special assessment appeals under Wis. Stat. § 66.0703 are special proceedings.” *CED Properties, LLC v. City of Oshkosh*, 2014 WI 10, ¶ 28, 352 Wis. 2d 613, 843 N.W.2d 382. “Chapters 801 to 847, Stats., govern procedure and practice in... special proceedings... except where unless a different procedure is prescribed by statute or rule. *Id.* ¶ 27, citing to Wis. Stat. § 801.01(2).¹⁶ See also *Matter of Est. of O'Neill*, 186 Wis. 2d

¹⁵ The Village certainly does not concede that Wis. Stat. § 801.14(2) is applicable to this situation in the first place. As discussed further below, GFLP did not properly commence this action, the Clerk is not a party to the suit and that General Counsel never asserted to GFLP that he represented the Clerk.

¹⁶ In *CED*, this Court determined that the notice pleading statutes of Wis. Stat. §§ 802.02, 801.01(2), and 802.02(6) do not conflict with the rules of Wis. Stat. § 66.0703

229, 233, 519 N.W.2d 750 (Ct.App.1994) (“Probate is a series of special proceedings... Chapter 879, STATS., sets forth specific procedures pertaining to probate. Consequently, wherever they conflict with the general procedures of ch.’s 801 to 847, we follow those in ch. 879.”).

In addition to the established law that specific procedures relating to special proceedings control over general statutes, it is also a long-standing rule of statutory interpretation that if two or more statutes are in conflict, the more specific statute controls over the general statute. *See State ex rel Hensley v. Endicott*, 2001, WI 105 ¶¶ 19-21, 245 Wis. 2d 607, 629 N.W. 2d 686; *City of Milwaukee v. Kilgore*, 193 Wis. 2d 168, 185, 532 N.W.2d 690, 696 (1995). *See also Walworth Cnty. v. Spalding*, 111 Wis. 2d 19, 24, 329 N.W.2d 925, 927 (1983) (A context-specific and mandatory procedure will displace a contrary general rule of civil procedure).

Wis. Stat. § 801.14(2) is part of the conglomerate of general procedure statutes which encompasses ch.’s 801 to 847. Wis. Stat. § 801.14(2) allows service of pleadings and other papers to be made upon a party represented by an attorney once an action is properly commenced.¹⁷ However, Wis. Stat. § 66.0703(12)(a) specifically governs special proceedings and requires service of the Notice of Appeal upon the Village Clerk. The statutes conflict. In its opening brief, GFLP argues

and accordingly, notice pleading requirements govern in appeals of special assessments. *See* 2014 WI 10, ¶ 29.

This makes sense. Nothing in Wis. Stat. § 66.0703 dictates the standard of pleading that must be made in a complaint or notice of appeal in a special assessment proceeding. However, contrary to this case, the statute does specifically say that the Clerk “shall be served” with the notice of appeal.

¹⁷ Again, the Village will later argue this statute does not apply in the first place because the Clerk is not a party to the suit and because Petitioner did not properly commence this action.

that it took the “stricter approach to serving the Village Clerk by following the requirement in Wis. Stat. § 801.14(2) that service on a represented party ‘shall be made on the attorney for the party.’” (Petitioner’s Brief at pgs. 16-17.) This is simply a misstatement of law. The “stricter approach” would have been to follow the context-specific, special proceeding statute, which requires service upon the Village Clerk of the Notice of Appeal. GFLP simply did not do so here.

GFLP cites to *Killgore* in its brief for the proposition that statutes must be read in harmony when possible to give each statute full force and effect and that should be done in the present case. (Petitioner’s Brief at pgs. 19-20.) This argument fails for several reasons.

First, in *Killgore*, this Court ultimately ruled that the specific statute took precedence over the general statute, citing to that bedrock principle of statutory interpretation. *Kilgore*, 193 Wis. 2d 168, 186, 532 N.W.2d 690, 697 (1995).¹⁸ Second, attempting to harmonize Wis. Stat. § 801.14(2) and Wis. Stat. § 66.0703(12)(a) would not give each statute “full force and effect” but rather it would render part of Wis. Stat. § 66.0703(12)(a) superfluous, as there would be no requirement to serve the Clerk.¹⁹ Third, attempting to harmonize two statutes that clearly

¹⁸ In *Killgore*, this Court said, “Section 343.30(5) which permits drivers license suspensions for the violation of any state or local traffic laws, is a general statute when compared to the more specific secs. 800.09 and 800.095, which set forth municipal procedure and provide municipal courts with the means to secure compliance with orders they issue. This court has held, and we so hold here that, when we compare a general statute and a specific statute, the specific statute takes precedence.”

¹⁹ This argument is outlined more in depth later in this brief.

conflict on their face would run contrary to the established case law that special proceeding statutes take precedent over the general statutes.

Not only is GFLP's argument contrary to the plain language of Wis. Stat. § 66.0703, but, importantly, it also runs afoul of the purpose of the statute, which is to create an easy and uniform process for appealing special assessments that requires strict compliance (and which in turn triggers statutory obligations of the Clerk) and the notion that context specific, mandatory statutes control over general statutes.

iii. Another Reason Wis. Stat. § 801.14(2) does not apply to the case at hand is because the Clerk is not a party to the lawsuit and GFLP never confirmed that General Counsel was representing the Clerk.

GFLP incorrectly asserts the court of appeals' sole basis for upholding the circuit court's ruling is because the Village Clerk was not a party to the suit such that Wis. Stat. § 801.14(2) does not apply. This is not a fair reading of the court of appeals' decision. Rather, the court of appeals determined that GFLP did not strictly comply with Wis. Stat. § 66.0703(12)(a) because it never served the Village Clerk. (Doc. 57, Ct. App. Opinion/Decision at pg. 3.) The court of appeals then secondarily stated, in response to arguments being advanced by GFLP, the following: "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." (*Id.*) The court of appeals analysis is correct in that the plain language of the statute requires service upon the Village Clerk.

The court of appeals is also correct Wis. Stat. § 801.14(2) is inapplicable because the Village Clerk was never a party to the suit and GFLP never confirmed that General Counsel was representing the

Village Clerk. Wis. Stat. § 801.14(2) states: “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... (emphasis added).”

GFLP acknowledges the Notice of Appeal and the summons and complaint are two different documents or actions that must be served upon the appropriate party. (Petitioner’s Brief at pg. 11.) In other words, both documents need to be served to commence the action. This makes sense when reviewing the statute. The “governing body” is tasked with most of the substantive acts relating to special assessments. *See generally*, Wis. Stat. § 66.0703. Indeed, as § 66.0703(12)(a) lays out, GFLP is appealing the determination of the “governing body.” So, when GFLP filed the summons and complaint, General Counsel admitted service of it on behalf of the “governing body.” However, § 66.0703(12)(a) states that the Notice of Appeal must be served upon the Clerk who in turn must fulfill the following statutory duties: the Clerk must present and prepare a statement of the proceedings in the matter before the “governing body” and transmit the record to the court. In other words, the summons and complaint brings the legal challenge to the special assessment of the governing body, but the Notice of Appeal separately provides notice of the proceeding to the Clerk, prompting the Clerk to conduct specific tasks as prescribed in the statute.

Moreover, the Notice of Appeal, per § 66.0703(12)(e), must contain therein “any question of law or fact, stated in the notice of appeal, involving the making of the improvement, the assessment of benefits or the award of damages or the levy of any special assessment.” As a result,

the Clerk as part of her report will inform the Board of the specific legal or factual challenge being made to the special assessment.

General Counsel never informed GFLP that it was representing the Clerk in this matter and never admitted service of the Notice of Appeal for the Clerk. Every local government and political entity, like every private corporate entity, with legal counsel has such legal counsel *representing the governing body*, not a single employee, position, or officeholder. Under the “entity rule” General Counsel does not represent every single constituent of the municipality; rather, the client is the municipality.

The “entity rule” is prescribed in SCR 20:1.13 and has been recognized in Opinions of this Court. In *Jesse v. Danforth*, 169 Wis. 2d 229, 485 N.W.2d 63 (1992), this Court discussed the entity rule expressed by SCR 20:1.13, holding that the organization, not the constituent, is the lawyer's client: “(SCR 20:1.13) clearly implies it is the organization, not the constituent that is the lawyer’s client.”). *See also Fouts v. Breezy Point Condo. Ass’n*, 2014 WI App 77, ¶ 12, 355 Wis. 2d 487, 851 N.W.2d 845 (“Wisconsin subscribes to the ‘entity rule,’ which provides that when a lawyer represents an organization, the organization is the client, not the organization's constituents.”). ABA comment 1 of SCR 20:1.13 defines “constituents” as positions equivalent to officers, directors, employees and shareholders.” Additionally, ABA comment 9 specifies that this rule also applies to governmental organizations. (emphasis added).

Accordingly, Wis. Stat. § 801.14(2) does not apply because GFLP never obtained confirmation that the Village Clerk was “represented by

an attorney” as Wis. Stat. § 801.14(2) requires, here, General Counsel. Rather, in the April 9, 2020, email to General Counsel, the attached letter with the Notice of Appeal mentioned that GFLP assumed the Village Clerk had “actual notice.” Actual notice is not relevant where, as here, the statute requires strict compliance, the intended target of service is not a party and the legal representative’s obligations run only to the governmental organization. Had the Clerk been named as a defendant and had General Counsel accepted service for both the Village Board and her (or just for her, because he would have had such consent from the governmental organization), then GFLP could have properly assumed General Counsel was representing the Village Clerk. However, that did not happen here.²⁰

Because GFLP never confirmed General Counsel’s representation of the Village Clerk, General Counsel never admitted service of the separate “action” (Notice of Appeal), and because the Village Clerk was not a party to the suit, Wis. Stat. § 801.14(2) does not apply.

C. GFLP’s interpretation of the statute would render parts of Wis. Stat. § 66.0703(12) superfluous.

GFLP’s interpretation is not reasonable as it creates surplusage in § 66.0703(12). “In interpreting a statute, courts give effect to every word so that no portion of the statute is rendered superfluous.” *Marotz v. Hallman*, 2007 WI 89, ¶ 18, 302 Wis. 2d 428, 734 N.W.2d 411. *See also*

²⁰ GFLP misconstrues the court of appeals’ decision and argues it makes it a necessity to name the Clerk as a party when appealing a special assessment. That is not the case. Rather, GFLP could have simply served the Clerk with the Notice of Appeal or obtained timely and clear affirmation from General Counsel that he had authority to admit service of the Notice of Appeal on behalf of the Clerk. GFLP did not do so.

State ex rel. Kalal v. Cir. Ct. for Dane Cnty., 2004 WI 58, ¶ 46, 271 Wis. 2d 633, 681 N.W.2d 110 (“Statutory language is read where possible to give reasonable effect to every word, in order to avoid surplusage.”).

The Statute requires a party to file a summons and complaint with the circuit court and to serve a Notice of Appeal upon the Village Clerk. Under GFLP’s interpretation of § 66.0703(12)(a), in which it argues that the relevant statute should be read “in harmony” with Wis. Stat. § 801.14(2), the mandatory requirement of serving the Clerk with the Notice of Appeal becomes complete surplusage in the statute and creates an end around for parties challenging special assessments and the requirement of strict compliance with Wis. Stat. § 66.0703(12), contrary to nearly 50 years of decisional law from this Court. As discussed in the next section, there are several good policy reasons for staying true to the Court’s precedent and determining that a Clerk ought to be served with the Notice of Appeal.

D. The statutory context, purpose, surrounding language, and policy considerations all require that the Clerk be served with the Notice of Appeal.

As explained above, the Court’s goal when interpreting a statute is to ascertain the intended effect of the statute, which may require reviewing the statute as a whole and in context:

[T]he purpose of statutory interpretation is to determine what the statute means so that it may be given its full, proper, and intended effect...Context is important to meaning. So, too, is the structure of the statute in which the operative language appears. Therefore, statutory language is interpreted in the context in which it is used; not in isolation but as part of a whole; in relation to the

language of surrounding or closely-related statutes; and reasonably, to avoid absurd or unreasonable results.

See Kalal, 2004 WI 58, ¶¶ 44 – 46 (emphasis added).

When reviewing the context, structure, intent, purpose, and policy considerations of the statute, serving the Notice of Appeal upon the Clerk is an absolute requirement. As the circuit court pointed out, upon being served the Notice of Appeal, § 66.0703(12)(a) directs the Clerk to perform specific, statutory tasks:

The person appealing shall serve a written notice of appeal upon the clerk of the city, town or village...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.

(emphasis added). *See* (R. 46, Transcript at pgs. 17-18.)

As the circuit court pointed out, clearly the legislature intended the Clerk to be served with the Notice of Appeal, as the Clerk has an important role in the statute upon being served; service of the Notice upon the Clerk initiates statutorily prescribed tasks that the Clerk must conduct. Section 66.0703(12)(e) also calls for the Notice of Appeal to contain “any question of law or fact” challenging the assessment. Accordingly, service of an important legal document—the Notice of Appeal—upon the Clerk is a requisite in this specific, special proceeding statute. *See* (Circuit Court’s Reasoning; R. 46 at pgs. 17-18.)

In fact, the entire scheme of Wis. Stat. § 66.0703 implicates the Clerk and requires that the Clerk perform statutorily required tasks.

- Wis. Stat. § 66.0703(6):

“A copy of the report when completed **shall be filed with the municipal clerk for public inspection.** If property of the state may be subject to assessment under s. 66.0705, **the municipal clerk shall file a copy of the report** with the state agency which manages the property.” (emphasis added)

- Wis. Stat. § 66.0703(7)(a):

“Upon the completion and filing of the report required by sub. (4), **the city, town or village clerk shall prepare a notice stating the nature of the proposed work or improvement, the general boundary lines of the proposed assessment district including, in the discretion of the governing body, a small map, the place and time at which the report may be inspected, and the place and time at which all interested persons, or their agents or attorneys, may appear before the governing body, a committee of the governing body or the board of public works and be heard concerning the matters contained in the preliminary resolution and the report.** The notice shall be published as a class 1 notice, under ch. 985, in the city, town or village and a copy of the notice shall be mailed, at least 10 days before the hearing or proceeding, to every interested person whose post-office address is known, or can be ascertained with reasonable diligence. The hearing shall commence not less than 10 nor more than 40 days after publication.” (emphasis added)

- Wis. Stat. § 66.0703(8)(d):

The city, town or village clerk shall publish the final resolution as a class 1 notice, under ch. 985, in the assessment district and a copy of the resolution shall be mailed to every interested person whose post-office address is known, or can be ascertained with reasonable diligence.” (emphasis added)

- Wis. Stat. § 66.0703(10):

“A notice of the resolution amending, canceling or confirming the prior assessment **shall be given by the clerk as provided in sub. (8) (d)**” (emphasis added)

- Wis. Stat. § 66.0703(12)(a):

“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.” (emphasis added)

- Wis. Stat. § 66.0703(12)(e):

“An appeal under this subsection is the sole remedy of any person aggrieved by a determination of the governing body, whether or not the improvement was made according to the plans and specifications, and shall raise any question of law or fact, stated in the notice of appeal, involving the making of the improvement, the assessment of benefits or the award of damages or the levy of any special assessment.” (emphasis added)

As delineated above, the Clerk is heavily involved through the entire special assessment process, including another requirement in 12(a), approving a bonding company if a petitioner were to choose a bonding company. The Wisconsin Legislature intended service of the Notice of Appeal to be upon the Clerk when reviewing the entire context, purpose, and language surrounding the specific wording at play.

Additionally, there are public policy reasons behind the statutory mechanism of serving the Clerk with the Notice of Appeal, who is the statutory officer for the Village obligated to attend the Village Board’s meetings, keep and maintain records, and to perform many other duties

as required by law, ordinance or direction of the Village Board. *See* Wis. Stat. § 61.25. In this way, the Village Clerk is the one who receives, handles, and informs the governing body of challenges to the special assessments they have levied and to prospect of or filing of legal actions in the courts. Whether it is a town clerk, a village clerk, or city clerk, the special assessment statute creates uniformity in accomplishing with the special assessment process from start to finish and makes sure the governing body is properly following its process and being summoned into court if there is an objection, versus having some patchwork of varied processes at the local levels or through other statutory schemes governing other general matters.

As noted in *Emjay*, “policy consideration behind this rule is to maintain a simple, ordinary, and uniform way of conducting legal business in our courts. Uniformity, consistency, and compliance with procedural rules are important aspects of the administration of justice. If the statutory prescriptions are to be meaningful, they must be unbending.” 2011 WI 31, ¶ 30.

When reviewing the policy considerations, context, and language surrounding the statute, the Village Clerk must be served with the Notice of Appeal.

E. GFLP’s interpretation of the relevant statute consists of a search for ambiguity, not an ascertainment of meaning.

Another rule of statutory interpretation is that courts do not search for ambiguity, rather, they ascertain meaning. *See Kalal*, 2004 WI 58, ¶ 47. (“Statutory interpretation involves the ascertainment of

meaning, not a search for ambiguity. The concurrence adopts the latter construct and takes it to a new level, manufacturing ambiguity where it does not exist.”).

GFLP does not argue that the statute is ambiguous other than it is unclear as to how the Clerk is to be served. However, in developing its arguments, GFLP avoids every bedrock rule of statutory interpretation and, rather, generically argues that following Wis. Stat. § 801.14(2) is the “stricter approach.” In addition to being incorrect that Wis. Stat. § 801.14 is the “stricter approach,” GFLP does not analyze the plain meaning of the statute, GFLP does not provide any analysis as to the ordinary words of the statute, and GFLP does not provide a single definition of the word “serve” besides a definition that is favorable to the Village. Rather, GFLP attempts to create ambiguity where none exists. That is why both lower courts agreed with the Village.²¹

²¹ Although GFLP does not argue that any other aspects of Wis. Stat. 66.0703(12) are ambiguous, and GFLP would be precluded from making that argument in its reply, the court of appeals has determined in the past that Wis. Stat. 66.60(12)(a) (the former statute) was ambiguous before the statute was reconfigured in 1999. *See Outagamie Cnty. v. Town of Greenville*, 2000 WI App 65, 233 Wis. 2d 566, 608 N.W.2d 414. However, the issue in that case was whether the proper way to commence an action was by first serving the clerk or by first filing with the circuit court. Effective in 2001, the Legislature made changes to the relevant statute which made clear that first, the summons and complaint must be filed with the circuit court and then a notice of appeal must be served upon the clerk. (*See* 1999 Act 150, §§ 525 to 535, eff. Jan. 1, 2001). Here, neither GFLP nor the Village dispute that first, that is, GFLP is to file the summons and complaint then service the Notice of Appeal upon the Clerk. *See In re Paternity of Roberta Jo W.*, 218 Wis. 2d 225, 233, 578 N.W.2d 185, 189 (1998) (Courts must presume the legislature is aware of judicial interpretations of a statute when amending that statute).

II. GFLP's Plea for Sympathy Lacks Legal Merit and Factual Support.

In its opening brief, citing to its own complaint, GFLP attempts to make an appeal to the emotions of the Court and argues that the Court should allow this matter to proceed on its merits:

(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. It also imposes the assessment against property that currently lies in the Town of Mukwonago not the Village, another error. And as set forth in the Complaint (GFLP) receives no benefit from the infrastructure for which the Village is seeking reimbursement.

(Petitioner's Brief at pg. 17.)

However, GFLP's sympathy-related arguments for reversal are legally insignificant and factually incorrect for several reasons.

A. Wisconsin requires strict compliance with its rules of statutory service to gain a court's competency, even though the consequences may appear to be harsh.

"Wisconsin requires strict compliance with its rules of statutory service, even though the consequences may appear to be harsh." *Johnson v. Cintas Corp. No. 2*, 2012 WI 31, ¶ 25, 339 Wis. 2d 493, 811 N.W.2d 756 (citations omitted). "Significantly, a defendant's actual notice of an action is not alone enough to confer personal jurisdiction upon the court; rather, "[s]ervice must be made in accordance with the manner prescribed by statute." *Id. See also Useni v. Boudron*, 2003 WI App 98, ¶ 13, 264 Wis. 2d 783, 662 N.W.2d 672 ("Wisconsin compels strict

compliance with the rules of statutory service, even though the consequences may appear to be harsh); *519 Corp. v. State Dep't of Transp.*, 92 Wis. 2d 276, 285–88, 284 N.W.2d 643 (1979) (illustrated earlier in brief).

In the present case, GFLP failed to serve the Clerk; it does not matter whether the Clerk had “actual notice” as GFLP alludes to in its April 9, 2020 letter to the Village. This case must be dismissed because GFLP failed to comply with the procedural provisions of Wis. Stat. § 66.0703 which must be unbending if they have any meaning.

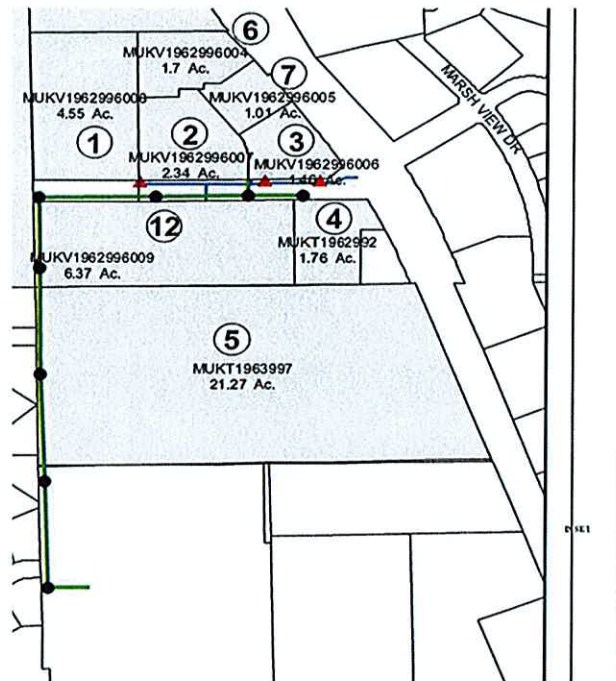
Because GFLP failed to comply, the circuit court lacked competency to proceed. “A circuit court’s ability to exercise its subject matter jurisdiction in individual cases, however, may be affected by noncompliance with statutory requirements pertaining to the invocation of that jurisdiction.” *Vill. of Trempealeau v. Mikrut*, 2004 WI 79, ¶ 2, 273 Wis. 2d 76, 681 N.W.2d 190; *see also Xcel Energy Servs., Inc., v. Lab. & Indus. Rev. Comm'n*, 2013 WI 64, ¶ 28, 349 Wis. 2d 234, 833 N.W.2d 665 (“Although a circuit court may not be deprived of jurisdiction by operation of a statute, a circuit court may lack competency to render a valid order or judgment when the parties seeking judicial review fail to meet certain statutory requirements.”); *Vill. of Elm Grove v. Brefka*, 2013 WI 54, ¶ 4, 348 Wis. 2d 282, 832 N.W.2d 121, amended, 2013 WI 86, ¶ 4, 350 Wis. 2d 724, 838 N.W.2d 87 (“We conclude that the circuit court is without competency to hear Brefka's request to extend the ten-day time limit set forth in Wis. Stat. § 343.305(9)(a)4. and (10)(a). The ten-day time limit is a mandatory requirement that may not be extended due to excusable neglect.”)

B. GFLP's allegations criticizing the assessment does not change the outcome.

For purposes of judicial review, the law presumes the municipality proceeded reasonably in making an assessment and the challenger bears the burden of establishing. *Steinbach v. Green Lake Sanitary Dist.*, 2006 WI 63, ¶ 11, 291 Wis. 2d 11, 715 N.W.2d 195. GFLP argues the special assessment is “outrageously faulty” because it imposes property taxes over 10 times the amount it imposes against other affected properties; the assessment is against property that currently lies in the Town of Mukwonago, not the Village; and GFLP does not benefit from the infrastructure for which the Village is seeking reimbursement. GFLP's contentions are misplaced in several respects.

The special assessment was used for sanitary sewer, water main, and drainage improvements made in conjunction with the Chapman Farms Boulevard paving and utilities project. The parcels that appear to benefit directly from the improvements are depicted below, which includes GFLP's Parcels 4 and 5. The green line and black dots that begins at the left edge of Parcel 4 and runs all the way down the left side of Parcel 5 represents sanitary improvements. The blue line and red triangles directly above Parcel 4 represent water improvements. Claiming that GFLP's Parcels will not receive any benefit from these improvements seems disingenuous simply by looking at the map below. And, importantly, GFLP need not actually use the improvements to receive a benefit from them. *CED Properties, LLC v. City of Oshkosh*, 2018 WI 24, ¶ 38, 380 Wis. 2d 399, 909 N.W.2d 136. Commercial property may receive special benefits from improved traffic safety and aesthetic

improvements to an adjacent public road, for example. *Molbreak v. Vill. of Shorewood Hills*, 66 Wis. 2d 687, 699, 225 N.W.2d 894 (1975).



GFLP is also incorrect in assuming the special assessment is invalid because its property currently lies in the Town of Mukwonago, not the Village. Wis. Stat. § 66.0707 allows a village to levy special assessments for municipal work or improvement under § 66.0703 on property in an adjacent city, village, or town, if the property abuts and benefits from the work or improvement and if the governing body of the municipality where the property is located by resolution approves the levy by resolution, all of which apply here. The payment of the assessment is deferred until GFLP's land is within the jurisdictional limits of the Village and until the utilities are available to said land.

Finally, the assessment in this case was made on a lot size basis. GFLP's assessment is large because it owns a large portion of land that

is subject to the assessment. Another reason why GFLP's assessment is higher than other properties is due to a change in total assessments overall, which was brought about by an increase in total non-assessable costs.

CONCLUSION

For the reasons explained herein, the Court should affirm the decisions of both the circuit court and court of appeals and hold that GFLP's failure to strictly comply with Wis. Stat. § 66.0703(12)(a) by serving the Notice of Appeal on the Clerk required dismissal of the lawsuit.

Dated this 19th day of January, 2023.

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CERTIFICATION REGARDING FORM AND LENGTH

I hereby certify that this brief conforms to the rules contained in s. 809.19 (8)(b), (bm), and (c) for a brief. This brief is produced with a proportional serif font and the length of this brief is 45 pages and 10,237 words.

Dated this 19th day of January, 2023.

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CERTIFICATE REGARDING ELECTRONIC BRIEF

I hereby certify that I have submitted an electronic copy of this brief, excluding the appendix, if any, which complies with the requirements of section 809.19(12), Stats.

I further certify that this electronic brief is identical in content and format to the printed form of the brief filed as of this date.

A copy of this certificate has been served with the paper copies of this brief filed with the Court and served on all opposing parties.

Dated this 19th day of January, 2023

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