STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

KENT, SC. **SUPERIOR COURT**

[FILED MARCH 19, 2014]

5750 POST ROAD MEDICAL OFFICES, LLC, LINK COMMERCIAL PROPERTIES, LLC, AMALFI HOMES, LLC, EAST GREENWICH ACQUISITIONS, LLC, and COASTWAY COMMUNITY BANK	:	
VS.	:	**C.A. No. KC-2013-0699**
EAST GREENWICH FIRE DISTRICT, and THE TOWN OF EAST GREENWICH, by and through its Finance Director, KATHLEEN RAPOSA	:	

DECISION

STERN, J. The Defendants move this Court for Summary Judgment pursuant to Rule 56(c) of the Superior Court Rules of Civil Procedure (Rule 56(c)). The Defendants contend that there are no genuine issues of material fact and that judgment should enter in their favor as a matter of law because the language in the Rhode Island Development Impact Fee Act (RIDIFA), G.L. 1956 §§ 45-22.4-1, et seq., clearly and unambiguously gives the East Greenwich Fire District (Fire District) the authority to assess and collect impact fees. The Defendants also contend that there is no genuine question that they fulfilled their due process requirements under the law, and submit, in support of this contention, certain records of an impact fee study the Fire District developed as mandated by RIDIFA in § 45-22.4-4, and evidence that the study—and the impact fees—were considered at regularly scheduled open meetings.

The Plaintiffs also move this Court for Summary Judgment. They, too, contend that there is no genuine issue of material fact and no ambiguity of law, and that judgment should be

granted in their favor. Both sides have filed objections to each other's motions, and both sides have filed extensive memoranda of law in support of their respective positions. Before this Court are the Plaintiffs' and Defendants' Motions for Summary Judgment on Counts I and II of the Plaintiffs' Complaint against the Defendants.

I

Facts and Travel

The Plaintiffs—three Rhode Island limited liability companies, a Rhode Island corporation, and a Rhode Island licensed bank—sued the Fire District and the Town of East Greenwich (the Town) alleging five counts in their complaint. The Plaintiffs challenge the legality of certain "development impact fees" imposed and collected by the Fire District against the Plaintiffs pursuant to RIDIFA and the East Greenwich Fire District Charter (FD Charter). The Plaintiffs argue that the Fire District had no authority to assess, levy, or collect impact fees on their developments because RIDIFA specifically endows cities and towns—not fire districts—with the exclusive authority to impose these kinds of fees on developers like the Plaintiffs. The Plaintiffs contend that since the Fire District was not a governmental entity that was authorized to adopt "ordinances" under the FD Charter or under state law, it was precluded from imposing and collecting development impact fees against the Plaintiffs under RIDIFA, and its imposition of development impact fees against the Plaintiffs was therefore an ultra vires act.[1] The Plaintiffs argue that only the Town had the authority to legislate by ordinance on local matters, and so the Town, and not the Fire District, had the exclusive authority under RIDIFA to impose the fees. Alternatively, the Plaintiffs argue that even if the Fire District did have the

[1] In 1998, the General Assembly incorporated "the entire Town of East Greenwich" into the East Greenwich Fire District. P.L. 1998, ch. 26. In 2003, through passage of P.L. 13-047, the Town of East Greenwich acquired "the property, assets and personnel of the East Greenwich Fire District" and the Fire District "cease[d] to exist." P.L. 2013, ch. 47, §§ 1, 2.

authority to adopt impact fees under RIDIFA and the FD Charter, the Fire District failed to comply with RIDIFA's requirements, and so the impact fees levied against the Plaintiffs were invalid. Specifically, the Plaintiffs contend that the Fire District failed to pass the impact fees by "ordinance"—passing them, instead, via "resolution"—and that the Fire District failed to abide by certain notice and hearing requirements prescribed by law.

II

Standard of Review

Summary judgment is proper when "no genuine issue of material fact is evident from the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, and the motion justice finds that the moving party is entitled to prevail as a matter of law." Smiler v. Napolitano, 911 A.2d 1035, 1038 (R.I. 2006) (quoting Rule 56(c)). When considering a motion for summary judgment, this Court must draw "'all reasonable inferences in the light most favorable to the nonmoving party.'" Hill v. Nat'l Grid, 11 A.3d 110, 113 (R.I. 2011) (quoting Fiorenzano v. Lima, 982 A.2d 585, 589 (R.I. 2009)). The burden lies on the nonmoving party to "prove the existence of a disputed issue of material fact by competent evidence," rather than resting on the pleadings or mere legal opinions and conclusions. Hill, 11 A.3d at 113. Where it is concluded "'that no genuine issue of material fact exists and that the moving party is entitled to judgment as a matter of law,'" summary judgment shall enter. Malinou v. Miriam Hosp., 24 A.3d 497, 508 (R.I. 2011) (quoting Poulin v. Custom Craft Inc., 996 A.2d 654, 658 (R.I. 2010)). However, "if the record evinces a genuine issue of material fact, summary judgment is improper." Shelter Harbor Conservation Soc'y, Inc. v. Rogers, 21 A.3d 337, 343 (R.I. 2011) (citations omitted).

III

Analysis

A

The Fire District's Authority to Impose Impact Fees

The General Assembly enacted RIDIFA to authorize the imposition of development impact fees to address a need for "an equitable program . . . for the planning and financing of public facilities to serve new growth and development in the cities and towns in order to protect the public health, safety and general welfare of the citizens of this state." Sec. 45-22.4-2(a). The General Assembly declared that it was "the public policy of the state and in the public interest that cities and towns are authorized to assess, impose, levy and collect . . . impact fees for all new development within their jurisdictional limits." Sec. 45-22.4-2(b). The General Assembly further stated that its intent in enacting RIDIFA was to "[e]mpower governmental entities which are authorized to adopt ordinances to impose development fees." Sec. 45-22.4-2(c)(5). "Governmental entities," as defined by the statute, are "unit[s] of local government." Sec. 45-22.4-3(4).[2]

The FD Charter was passed by the Rhode Island General Assembly in 1882[3] and it was amended several times by the General Assembly in the ensuing decades. In 1998, the General Assembly passed an amendment that rearranged the relationship between the Fire District and the Town. The General Assembly amended the FD Charter to provide that "[t]he entire Town of East Greenwich is hereby incorporated into a district to be called the East Greenwich Fire

[2] "Local government" is defined in Black's Law Dictionary as "[t]he government of a particular locality, such as a city or county; a governing body at a lower level than the state government." Black's Law Dictionary 716 (8th ed. 2004). "Local government" specifically includes "a school district, fire district, transportation authority, and any other special-purpose district or authority." Id.

[3] See 1882 Rhode Island Acts and Resolves, January Session 238-242.

District." P.L. 1998, ch. 26, § 1. Through this same chapter of the public laws, the General Assembly provided that the "Fire District shall be entitled to all the rights, powers, and privileges conferred upon towns by the provisions of [t]itle 45 of the Rhode Island general laws, and upon availing itself of said rights, powers, and privileges shall be subject to all the duties and liabilities contained in said [t]itle 45." Id. at § 10.[4]

It is not within the province of this Court "to insert in a statute words or language that does not appear therein except in those cases where it is plainly evident from the statute itself that the legislature intended that the statute contain such provisions." New England Die Co. v. Gen. Products Co., 92 R.I. 292, 298, 168 A.2d 150, 154 (1961) (citing Goldman v. Forcier, 68 R.I. 291, 27 A.2d 340 (1942)). It is clear that the General Assembly knew how to limit the authority to undertake government action and could have done so with RIDIFA, had it wanted to do so. RIDIFA, by its own terms, lacks any language that limits the authority to impose development fees to cities and towns. It is not evident from the statute itself that it was the General Assembly's intention to so limit this authority; in fact, it is evident from the statute that it was the General Assembly's intention to do the opposite. RIDIFA provides that "[g]overnmental authorities which are authorized to adopt ordinances" may impose development fees under § 45-22.4(c)(5).[5] The universe of entities empowered to implement development fees includes more than just cities and towns.[6]

[4] Under the amended Charter, the General Assembly also empowered the Fire District to borrow money and issue bonds (§ 11); and empowered residents of the Fire District to order, assess and collect property taxes (§ 8), enact Fire District by-laws (§ 12), vote in meetings (§ 2), and elect officers (§ 4). P.L. 1998, ch. 26.

[5] An "ordinance" is "[a]n authoritative law or decree." Black's Law Dictionary 1132 (8th ed. 2004).

[6] The Plaintiffs urge this Court to consider the holding in another Superior Court decision, Kirkbrae Glen, Inc. v. Albion Fire Dist., 2011 WL 3153303 (2011), where the hearing Justice found that the statute in question, G.L. 1956 § 44-5-11.8, "exclude[d] any mention of a fire

It is also clear that the General Assembly intended that the Fire District possess the authority to adopt authoritative laws and decrees (i.e., "ordinances") when it enacted P.L. 1998, ch. 26: the General Assembly incorporated, into the Fire District, the "entire Town of East Greenwich" and empowered the Fire District with "all the rights, powers, and privileges conferred upon towns by the provisions of [t]itle 45 of the Rhode Island [g]eneral [l]aws." P.L. 1998, ch. 26, §§ 1, 10. The provisions of Title 45 include the ability to "make and ordain all ordinances and regulations" as provided for under § 45-6-1. Sec. 45-6-1. And, necessarily, this authority includes the ability to impose impact fees granted to "[g]overnmental authorities which are authorized to adopt ordinances" under RIDIFA.

The plain and ordinary language of RIDIFA gives the Fire District the specific authority to impose impact development fees, because the Fire District is a governmental entity which is authorized to adopt ordinances according to the power vested in it by the General Assembly through the amendments to the FD Charter. When a statute is "'clear and unambiguous, [the Court] must enforce it as written by giving the words of the [statute] their plain and ordinary meaning.'" Pierce v. Providence Ret. Bd., 15 A.3d 957, 963 (R.I. 2011) (quoting Murphy v. Zoning Bd. of Review of S. Kingstown, 959 A.2d 535, 541 (R.I. 2008)). This Court must enforce RIDIFA as it was written, and it must interpret P.L. 1998, ch. 26 as it was enacted. The Plaintiffs urge this Court to read the FD Charter more narrowly, because literally interpreting P.L. 1998, ch. 26, § 10 to mean that the Fire District has the authority to do anything that a city

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district," and concluded that the defendant Fire District "did not have the authority . . . to adopt a tax classification plan." Id. Notwithstanding the fact that Kirkbrae Glen has no precedential authority over this Court's Decision, the Plaintiffs' reliance on Kirkbrae Glen is misplaced. Section 44-5-11.8 specifically provides that "any city or town may adopt a tax classification plan, by ordinance." Sec. 44-5-11.8 (emphasis added). RIDIFA, by contrast, authorizes "[g]overnmental authorities which are authorized to adopt ordinances" to impose development fees. Sec. 45-22.4(c)(5). The circumstances in Kirkbrae Glen are fundamentally different than those in play here.

or town is enabled to do under Title 45 would be "absurd." This argument, however, is unavailing. The General Assembly chose to shroud the existential frame of the Fire District with the legal and administrative vestments of a city or town of the State of Rhode Island by assigning it "all the rights, powers and privileges" of Title 45. P.L. 1998, ch.26, § 10 (emphasis added). It is not the province of the Court to contemplate the wisdom of the General Assembly, but to enforce its will. See City of Pawtucket v. Sundlun, 662 A.2d 40, 57 (R.I. 1995) (Supreme Court finds that it is the judiciary's duty to determine the law, not to make the law).[7] There is no ambiguity in the statute. The Court is bound to give its words "their plain and ordinary meaning." The Fire District had the authority under RIDIFA and the FD Charter to assess, impose, and collect impact fees against Fire District residents.[8]

B

Adoption of Impact Fees Via "Resolution"

RIDIFA provides that "[i]mpact fees shall be adopted by ordinance." Sec. 45-22.4-8. It is not disputed that the Fire District adopted the impact fees at issue in this case through a

[7] The General Assembly, in fact, obliterated all distinctions between the East Greenwich Fire District and the Town of East Greenwich by merging the two in 2013. See P.L. 2013, ch. 47. The conclusion that § 10 of the amended Charter enables the Fire District to impose impact fees pursuant to RIDIFA is consistent with a General Assembly that was clearly struggling—and even experimenting—with local governance issues at the city/town and fire district level.

[8] The Court's conclusion is buttressed by the language the General Assembly used when it enacted P.L. 2013, ch. 47. Under this law, the Town of East Greenwich acquired "the property, assets and personnel of the East Greenwich Fire District" and the Fire District "cease[d] to exist." P.L. 2013, ch. 47, §§ 1, 2. In § 8 of P.L. 2013, ch. 47, the General Assembly provided for the administration of "any and all funds acquired by the Town of East Greenwich . . . which at the time of the passage of this Act are held by the East Greenwich Fire District." P.L. 2013, ch. 47, § 8. The Charter calls for these funds to "be held, used or applied, spent, expended and administered by the Town of East Greenwich in accordance with the restrictions imposed thereon until the funds have been exhausted." Id. The General Assembly specifically contemplated that RIDIFA funds could be "held" by the Fire District. It is reasonable to interpret this language to mean that the General Assembly intended the Fire District to be able to impose and collect impact fees pursuant to RIDIFA, and that funds acquired through these fees were to be turned over to the Town of East Greenwich upon enactment of P.L. 2013, ch. 47.

"resolution." See Defs.' Ex. C. The Plaintiffs argue that the Fire District impermissively attempted to give itself the authority to assess and collect impact fees by the mere passage of a "resolution"—which the Plaintiffs equate with matters of special or temporary character—whereas "ordinances" prescribe some permanent rule of conduct or government. See O'Connell v. Bruce, 710 A.2d 674, 679 (R.I. 1998) (Supreme Court finds that a town's pension plan was not invalid merely because it was originally created by resolution rather than by ordinance because the town clearly "intended to regulate" the affairs of the municipality when it created the pension fund, and that the resolution it passed to that end was "in substance and effect an ordinance" sufficient to satisfy the hortatory guidelines and legislative intent reflected in the General Assembly's enabling statute).

Applying the logic of our Supreme Court's holding in Bruce, however, this Court finds that the "resolution" here was also "in substance and effect" an ordinance that satisfied the legislative intent reflected in RIDIFA. Id. Clearly, the Fire District complied with RIDIFA's requirements in § 45-22.4-4 with respect to conducting "a needs assessment for the type of public facility or public facilities for which impact fees are to be levied." Sec. 45-22.4-4. The Fire District supplied a record of an initial Development Impact Fee Study prepared by a consultant for the Fire District in 2002. See Defs.' Ex. F. The Fire District's "resolution" was more than just a statement of some matter of special or temporary nature. Even though the impact fee schedule was imposed, technically, through "resolution," there is no genuine issue of material fact that the Fire District complied with RIDIFA's mandate that the fees be adopted by ordinance.

C

Compliance With Notice and Hearing Requirements

RIDIFA requires that "impact fees shall be adopted by ordinance . . . in the manner prescribed by law." Sec. 45-22.4-8. The Plaintiffs contend that the Fire District failed to satisfy the notice[9] and hearing[10] requirements provided in the Town Charter for the adoption of ordinances, and therefore, the resolution imposing the impact fees is invalid. The Plaintiffs argue that the Fire District never published notice of the meeting where the impact fees would be considered and enacted in contravention of § C-70 of the Town Charter. The Plaintiffs state that the Defendants failed to furnish documentation during discovery showing that they did, indeed, host an advertised meeting, and they argue that the only reasonable inference of the Defendants' failure to provide this information is that there was no advertised hearing in the first place.

This Court has already concluded that the Fire District was vested by the General Assembly with the authority to assess, levy, and collect impact fees against the residents of the

[9] The East Greenwich Charter provides that:

> "[e]very hearing on an ordinance or amendment to an ordinance . . . shall be advertised by publication by the Town Clerk of a notice in a newspaper of general circulation within the Town once at least five days before the date of hearing. The notice shall set forth the date, time and place of hearing and either the text of the proposed ordinance or the amendment of the ordinance or a digest thereof certified by the Town Solicitor to the Town Clerk as containing an adequate disclosure of the substance of the ordinance or amendment." East Greenwich Charter, Chapter C, Part 3, Article IX, § C-70.

[10] The East Greenwich Charter provides that:

> "[e]very ordinance, other than an emergency ordinance, shall be read a first time by title and explained by its sponsor at the meeting at which it is introduced and then referred to a subsequent regular or special meeting for hearing. A public hearing shall be held by the Town Council at the regular or special meeting to which the matter was referred, or any adjournment thereof, and no action shall be taken on the ordinance until the next regular or special Town Council meeting held after the conclusion of the hearing." East Greenwich Charter, Chapter C, Part 3, Article IX, § C-69.

Fire District by virtue of the fact that RIDIFA permits "[g]overnmental authorities which are authorized to adopt ordinances" to impose these fees. This Court has also concluded that the "resolution" through which the Fire District imposed the impact fees was "in substance and effect" an ordinance that satisfied the legislative intent articulated in RIDIFA, because the "resolution" through which the impact fees were enacted was more than just a statement of some matter of special or temporary nature. The "resolution" was an acceptable means of imposing the fees. This does not change the fact, however, that the impact fees were, nonetheless, implemented through a procedure that was still, technically, a "resolution." They were not imposed through a procedure technically known as an "ordinance." The strict requirements for hearing and notice in the Town Charter for passage of a Town ordinance were not triggered when the Fire District passed a Fire District resolution. Although the Town Charter in §§ 69 and 70 instructs the Town on the procedures it needs to follow whenever an ordinance is on the agenda at a public meeting, it strains the imagination to conclude that the Fire District had to follow the same protocol when it consciously and patently attempted to do something other than what §§ 69 and 70 were meant to cover.[11]

[11] The situation in this case is different than that in Johnson & Wales Coll. v. DiPrete, 448 A.2d 1271 (R.I. 1982), cited by the Plaintiffs for the proposition that where notice requirements in regard to an ordinance have not been met, the ordinance is invalid. In Johnson & Wales, a state statute, § 45-24-4, required a public hearing prior to the enactment, amendment, or repeal of any zoning ordinance of a general nature, and a zoning ordinance of a general nature was specifically at issue. The Supreme Court expressly found that "[i]t ha[d] long been the rule in this state that the notice requirement [in § 45-24-4] must be strictly adhered to," citing case law to show that the language in that particular statute was "clear and mandatory." Johnson & Wales, 448 A.2d at 1279 (citing R.I. Home Builders, Inc. v. Budlong Rose Co., 77 R.I. 147, 152, 74 A.2d 237, 239 (1950). The Johnson & Wales Court also found that R.I. Home Builders precluded a finding that "substantial compliance" with § 45-24-4 was enough to satisfy that particular statute. Id. Moreover, the defendant City Officials in Johnson & Wales called a special meeting of the city council to be held on the following day, and the newspaper advertisement that the City Officials published announcing this special meeting ran on the same day as the meeting was to take place—giving no advanced notice. Id. By contrast, there is no mandate here that strict

IV

Conclusion

There is no genuine issue of material fact that the Fire District was empowered to assess, impose, levy and collect impact fees against the Plaintiffs. There is also no genuine issue of material fact that the Fire District complied with substantive and procedural due process requirements called for under Rhode Island law. Having so concluded, with respect to Counts I and II of the Plaintiffs' Complaint in this matter, the Plaintiffs' Motion for Summary Judgment is hereby denied and the Fire District's Motion for Summary Judgment is granted. Counsel shall submit the appropriate order for entry.

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adherence to §§ 69 and 70 of the Town Charter is required; there is no dispute that the "resolution" was passed during a regularly scheduled meeting—as opposed to a "special meeting" arranged the day before—and the Defendants have demonstrated that the process whereby the impact fees were considered and enacted was transparent, open, and liable to public contemplation.

RHODE ISLAND SUPERIOR COURT

Decision Addendum Sheet

TITLE OF CASE:	5750 Post Road Medical Offices, LLC, et al. v. East Greenwich Fire District, et al.
CASE NO:	KC 13-0699
COURT:	Kent County Superior Court
DATE DECISION FILED:	March 19, 2014
JUSTICE/MAGISTRATE:	Stern, J.
ATTORNEYS:	
For Plaintiff:	Michael A. Kelly, Esq.
For Defendant:	Peter A. Clarkin, Esq.