

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

KENT, SC.

SUPERIOR COURT

(FILED: October 2, 2015)

RHODE ISLAND BUILDERS ASSOCIATION; :
COVENTRY LAND COMPANY, LLC; R.B. :
HOMES, INC.; STURBRIDGE HOME :
BUILDERS, INC.; ELAINE ENTERPRISES, :
INC.; and RICHARD LINKEVICH, :
Plaintiffs :

v. :

C.A. No. KB-2011-1134

TOWN OF COVENTRY, by and through its :
Treasurer, THEODORE PRZYBYLA; and :
GARY COTE, KERRY MCGEE, TED :
JENDZEJEC, and RAYMOND SPEAR, in their :
Official Capacities as Members of the Town :
Council of the Town of Coventry. :
Defendants. :

DECISION

STERN, J. Before this Court for decision is Plaintiffs’ Coventry Land Company, LLC (Coventry Land) and Richard Linkevich (Linkevich) (collectively, Plaintiffs) Motion for Partial Summary Judgment. Plaintiffs move for summary judgment on Count II of their Amended Complaint. In support of their Motion for Partial Summary Judgment, Plaintiffs argue that the Town of Coventry (Coventry or Defendant) failed to comply with the statutory requirements of the Rhode Island Fair Share Development Fee Act before amending its Impact Fee Ordinance in 2010. Specifically, Plaintiffs contend that Coventry failed to distinguish its public facilities’ current deficiencies from the future needs that would be present from future growth and development. Conversely, Coventry argues that Plaintiffs’ Motion must be denied since Plaintiffs lack standing to challenge the amended Impact Fee Ordinance. Specifically, Coventry contends it complied with the necessary statutory requirements before amending its Impact Fee

Ordinance. Further, Coventry argues that the voluntary payment doctrine prevents Plaintiffs from recovering impact fees previously paid.

I

Facts and Travel

At the turn of the twenty-first century, the departments and public facilities of Rhode Island's cities and towns were starting to become overburdened by expansive new growth and development. As a result, in July of 2000, the Rhode Island General Assembly passed the Rhode Island Development Impact Fee Act¹ (the Act) granting municipalities the authority to establish impact fees. The Act was designed to ensure that municipal public facilities would be able to accommodate new growth and development and required those benefitting from the development to pay a proportionate share of the cost for new or upgraded public facilities needed to serve the expansion. However, impact fees could not exceed the proportionate share of the costs incurred, or to be incurred, by the governmental entity in accommodating the new expansion. See § 45-22.4-4. The assessment of an impact fee is based upon the actual costs incurred to expand or improve public facilities or upon reasonable estimates of the cost to be incurred. The Act further requires that any calculation be in accordance with generally accepted accounting principles (GAAP). Before the assessment of any impact fee, the Act states a city or town is required to conduct a "needs assessment" to determine which public facility or facilities will receive the impact fees collected.²

¹ G.L. 1956 §§ 45-22.4-1, et seq.

² In its "needs assessment," a municipality was to ascertain the level of service standards, identify projected public capital improvements needed, and distinguish existing needs and deficiencies from future needs. These findings then had to be adopted by the local governmental agency. See § 45-22.4-4(a).

On September 25, 2000, Coventry passed Ordinance No. 5-00-0220 (the Impact Fee Ordinance) authorizing the assessment of a Fair Share Development Fee³ (Impact Fee) for new residential developments. The Impact Fee Ordinance assessed an Impact Fee of \$7596 per each new residential unit.⁴ The assessment value of the Impact Fee was based on Coventry's prepared Fair Share Development Fee Report (the 2000 Fee Report).⁵ Sometime in late 2009 or early 2010, Coventry decided to amend its Impact Fee Ordinance. Paul Sprague, Esq. (Sprague), Coventry's Director of Planning and Development, commenced an investigation of Coventry's population trend and the capital needs of its various departments in order to determine whether an adjustment to the Impact Fee Ordinance was necessary.⁶

As part of his investigation, Sprague conducted a review of Coventry's various department budgets. In order to project population growth and to anticipate the future population of Coventry, Sprague relied upon the 2005 U.S. Census report, the most recently published report at that time. After compiling and reviewing the gathered information, a second Fair Share Development Fee Report (2010 Fee Report) was presented to Coventry which proposed an Impact Fee value to mitigate the adverse effect that projected population growth would have on its public departments and how to apportion the fee between various departments.⁷ On September 13, 2010, Coventry, based upon the 2010 Fee Report, amended its Impact Fee

³ The Impact Fee Ordinance was codified under § 5-6 in Coventry's Code of Ordinances.

⁴ The collection of each Impact Fee was divided as follows: \$2200 for a Parks and Recreation Facilities Fee; \$1896 for a Road Improvements Fee; and \$3500 for an Educational Facilities Fee.

⁵ The 2000 Fee Report was prepared in order to comply with § 45-22.4-2, which required every municipality to conduct a "needs assessment" before establishing Impact Fees.

⁶ The investigation by Sprague consisted of a review of the Zoning Enabling Act, the Impact Fee Ordinance, and the relevant case law focusing on Impact Fees.

⁷ The 2010 Fee Report identified \$63,627,401 of capital needs for Coventry. Based on these values, the 2010 Fee Report stated that an Impact Fee of \$7411.44 per dwelling was necessary to fund Coventry's capital needs.

Ordinance (Amended Impact Fee Ordinance).⁸ The Amended Impact Fee Ordinance assessed the same amount of Impact Fees; however, the ordinance altered the apportionment of the Impact Fee.⁹ The purpose of Coventry amending its Impact Fee Ordinance was for it to be more consistent with Coventry's Comprehensive Community Plan (Comprehensive Plan).¹⁰

In October of 2011, Plaintiffs filed the instant suit challenging the amount of the Impact Fee assessed under the Amended Impact Fee Ordinance. On May 5, 2011, Coventry Land received Master Plan approval for a major subdivision of seventy-five lots. Coventry Land alleges that each residential unit is subject to the imposition of Impact Fees under Coventry's Amended Impact Fee Ordinance. Coventry contends that the Impact Fees assessed against Coventry Land are pursuant to a 2007 Consent Judgment (2007 Consent Judgment). Linkevich argues that he was assessed Impact Fees pursuant to the Amended Impact Fee Ordinance on December 22, 2010. Plaintiffs now seek (1) a declaration that Coventry's enacted Amended Impact Fee Ordinance is invalid as it is in violation of § 45-22.4-1; (2) a return of Impact Fees paid; and (3) a restraining order enjoining Coventry from further collecting Impact Fees.

⁸ Codified at § 106-6 of Coventry's Code of Ordinances. The Amended Impact Fee Ordinance states the findings of the 2010 Fee Report, represents a reasonable methodology and analysis for the determination of Impact Fees, and is adopted in its entirety.

⁹ The Amended Impact Fee Ordinance apportioned the Impact Fee as follows: \$1520 for a law Enforcement Fee; \$1140 for a Parks and Recreation Facilities Fee; \$150 for a Human Services Fee; \$1900 for a Public Works Fee; \$2280 for a Public Schools Fee; \$230 for a Government Center/Library Expansion Fee; \$150 for a Sewers Fee; and \$226 for "other" public facilities.

¹⁰ Coventry's Comprehensive Plan has not been updated since June 19, 2010. At the time the Amended Impact Fee Ordinance was passed, § 45-22.2-12 required municipalities to update its Comprehensive Plan every five years. On July 12, 2011, the law was amended requiring a municipality to update its plan every ten years.

II

Standard of Review

“Summary judgment is a proceeding in which the proponent must demonstrate by affidavits, depositions, pleadings and other documentary matter . . . that he or she is entitled to judgment as a matter of law and that there are no genuine issues of material fact.” Palmisciano v. Burrillville Racing Ass’n, 603 A.2d 317, 320 (R.I. 1992) (citing Steinberg v. State, 427 A.2d 338 (R.I. 1981)). The court, during a summary judgment proceeding, “does not pass upon the weight or the credibility of the evidence but must consider the affidavits and other pleadings in a light most favorable to the party opposing the motion.” Id. (citing Lennon v. MacGregor, 423 A.2d 820 (R.I. 1980)). Moreover, “the justice’s only function is to determine whether there are any issues involving material facts.” Steinberg, 427 A.2d at 340. The court’s purpose during the summary judgment procedure is issue finding, not issue determination. O’Connor v. McKanna, 116 R.I. 627, 633, 359 A.2d 350, 353 (1976). The judge’s task in ruling on a summary judgment motion is to determine whether there is a genuine issue concerning any material fact. Id.

Under the Uniform Declaratory Judgments Act (UDJA), the Superior Court possesses the “power to declare rights, status, and other legal relations whether or not further relief is or could be claimed.” G.L. 1956 § 9-30-1; see also P.J.C. Realty, Inc. v. Barry, 811 A.2d 1202, 1207 (R.I. 2002) (quoting § 9-30-1). Thus, “the Superior Court has jurisdiction to construe the rights and responsibilities of any party arising from a statute pursuant to the powers conferred upon [it] by G.L. 1956 chapter 30 of title 9, the Uniform Declaratory Judgments Act.” Canario v. Culhane, 752 A.2d 476, 478-79 (R.I. 2000). Specifically, § 9-30-2 of the UDJA provides as follows:

“Any person interested under a deed, will, written contract, or other writings constituting a contract, or whose rights, status, or other legal relations are affected by a statute, municipal ordinance, contract, or franchise, may have determined any question of

construction or validity arising under the instrument, statute, ordinance, contract, or franchise and obtain a declaration of rights, status, or other legal relations thereunder.” Section 9-30-2 (emphasis added).

A trial court’s “decision to grant or to deny declaratory relief under the [UDJA] is purely discretionary.” Sullivan v. Chafee, 703 A.2d 748, 751 (R.I. 1997). Further, the purpose of the UDJA is “to allow the trial justice to ‘facilitate the termination of controversies.’” Bradford Assocs. v. R.I. Div. of Purchases, 772 A.2d 485, 489 (R.I. 2001) (citations omitted). It is axiomatic that “[a] declaratory-judgment action may not be used for the determination of abstract questions or the rendering of advisory opinions, nor does it license litigants to fish in judicial ponds for legal advice.” Sullivan, 703 A.2d at 751 (internal citations and quotations omitted).

III

Analysis

A

Plaintiffs’ Standing

Coventry first argues that Plaintiffs’ Motion for Partial Summary Judgment ought to be denied since Plaintiffs lack standing to challenge the validity of the Amended Impact Fee Ordinance. Coventry contends that Coventry Land will be paying Impact Fees in the future pursuant to the 2007 Consent Judgment it entered into with Coventry and not the 2010 Amended Impact Fee Ordinance. Coventry further contends that Coventry Land, by entering into the 2007 Consent Judgment, is now barred by res judicata from arguing the validity of the Amended Impact Fee Ordinance. Lastly, Coventry argues that even if Plaintiffs have paid Impact Fees pursuant to the Amended Impact Fee Ordinance, both are now barred from recovering fees previously paid by the voluntary payment doctrine.

Coventry Land's Standing

Coventry argues that Coventry Land lacks standing to challenge the validity of the Amended Impact Fee Ordinance since Coventry Land is required to pay Impact Fees pursuant to the 2007 Consent Judgment. Therefore, Defendant contends that Coventry Land has not suffered an injury that warrants standing to challenge the Amended Impact Fee Ordinance's validity.

Plaintiffs must demonstrate a personal stake in the controversy before being able to challenge the validity of an ordinance that affects the community as a whole. In other words, it must be demonstrated that Plaintiffs have suffered an injury in fact. Burns v. Sundlun, 617 A.2d 114, 116 (R.I. 1992) (quoting Blackstone Valley Chamber of Commerce v. Public Utils. Comm'n, 452 A.2d 931, 933 (R.I. 1982)). There is sufficient standing to sue if Plaintiffs allege “an injury in fact resulting from the challenged [ordinance].” Id. (quoting R.I. Ophthalmological Soc’y v. Cannon, 113 R.I. 16, 26, 317 A.2d 124, 129 (1974)). Injury in fact means “an invasion of a legally protected interest which is [] concrete and particularized . . . and [] actual or imminent, not conjectural or hypothetical.” Meyer v. City of Newport, 844 A.2d 148, 151 (R.I. 2004) (quoting Pontbriand v. Sundlun, 699 A.2d 856, 862 (R.I. 1997)) (internal quotations omitted). For this Court to exercise jurisdiction under the UDJA, there must exist an actual justiciable controversy. Id. To create a justiciable controversy, the facts must demonstrate a “legal hypothesis which will entitle the plaintiff to real and articulable relief.” Id.

Plaintiffs' Complaint states that Coventry Land is expected to pay Impact Fees associated with a seventy-five lot residential development plan known as “the Oaks,” which received Master Plan approval from Coventry's Planning Board on April 27, 2011. Coventry Land contends that Coventry has enacted Impact Fees on this development pursuant to the invalid

Amended Impact Fee Ordinance. However, Coventry Land has yet to pay Impact Fees, but has received Master Plan approval to develop property. Therefore, when it seeks building permits, Coventry Land argues it will be forced to pay an invalidly enacted Impact Fee.

Defendant is under the impression that Coventry Land, through its predecessor-in-interest, Spectrum Properties, LLC (Spectrum), entered into a Consent Judgment with Coventry in 2007, whereby Coventry Land agreed to pay Impact Fees. After reviewing the 2007 Consent Judgment, it appears to this Court that Spectrum was to make a financial contribution, in the form of an Impact Fee, not to exceed \$200,000 to offset the cost of future road resurfacing in the adjacent neighborhood. See Def.'s Ex. E ¶ 7. The 2007 Consent Judgment does not specifically state that this payment to offset the cost of road resurfacing would be in lieu of paying Impact Fees. Therefore, it is likely that Coventry intended to impose additional fees upon Coventry Land's application for building permits.

Coventry made this intention known. When Coventry Land's Master Plan was approved, Coventry's Planning Board stated that an additional Impact Fee of \$7596 per unit was to be assessed on the development. See Def.'s Exs. F, G. Defendant argues that Coventry's Planning Board, in 2011, assessed and set Impact Fees for Coventry Land's development pursuant to the 2007 Consent Judgment. However, the 2007 Consent Judgment only implies that Impact Fees would still be applicable to Coventry Land's development. The 2007 Consent Judgment does not specifically state the amount of Impact Fees Coventry Land is responsible for paying. In fact, the 2007 Consent Judgment seems to only state that Impact Fees "in the normal course for this project" can be applied. See Def.'s Ex. E ¶ 7. When the Planning Board met on April 27, 2011, it stated that a \$7596 Impact Fee per residential unit would be applied to Coventry Land's development. Although the Planning Board was instructed to approve the Master Plan as long as

the plan was consistent with the 2007 Consent Judgment, the 2007 Consent Judgment did not state the amount of Impact Fees that were to be applied; rather, it said only that they should be levied. Therefore, this Court finds that in 2011, when the Planning Board approved the Master Plan and assessed Impact Fees, the Planning Board assessed the fee that was in place at that point in time. In other words, it assessed the Impact Fee that was in place pursuant to the Amended Impact Fee Ordinance. The 2007 Consent Judgment did not state that the Impact Fees were to be assessed based on the figure in place in 2007. Therefore, this Court finds that Coventry Land has standing to challenge the validity of the Amended Impact Fee Ordinance. See Warwick Sewer Auth. v. Carlone, 45 A.3d 493, 499 (R.I. 2012) (injury in fact must be actual or imminent, not speculative or hypothetical); see also 56 Am. Jur. 2d Municipal Corporations, Etc. § 319 (stating a party can challenge an ordinance’s validity if plaintiff is “directly and adversely” impacted by the ordinance).

2

Res Judicata

Coventry next argues that even though Coventry Land has been assessed Impact Fees pursuant to the 2010 Amended Impact Fee Ordinance, Plaintiffs’ ability to challenge the Amended Impact Fee Ordinance is barred by the doctrine of res judicata.

Res judicata “relates to the preclusive effect of a final judgment in an action between the parties.” Plunkett v. State, 869 A.2d 1185, 1187 (R.I. 2005). The doctrine applies when ““there exists identity of parties, identity of issues, and finality of judgment in an earlier action.”” Id. at 1188 (quoting Beirne v. Barone, 529 A.2d 154, 157 (R.I. 1987)). Applying the “transactional rule,” courts have held that “all claims arising from the same transaction or series of transactions

which could have properly been raised in a previous litigation are barred from a later action.” Bossian v. Anderson, 991 A.2d 1025, 1027 (R.I. 2010).

Here, Coventry alleges that even if Coventry Land will pay Impact Fees pursuant to the Amended Impact Fee Ordinance, the issues being raised today arise out of the same transaction or series of transactions as the prior litigation. Essentially, Coventry argues that Coventry Land agreed to pay Impact Fees through the 2007 Consent Judgment. This Court is not persuaded by this argument.

When Coventry Land received Master Plan approval from Coventry’s Planning Board, the Planning Board appears to have assessed Impact Fees pursuant to the Amended Impact Fee Ordinance. The 2007 Consent Judgment does not expressly state that Coventry Land could not protest the implication of additional Impact Fees. Further, the issue now before this Court—whether Coventry followed statutory requirements in 2010 when it amended its Impact Fee Ordinance—did not exist prior to 2007. It was not possible for Coventry Land to raise this issue. See Bossian, 991 A.2d at 1027. When the 2007 Consent Judgment was entered into, it would have been impossible at that time for Coventry Land to contest an amendment to an ordinance which would not take place for another three years. Since the argument concerning the validity of the Amended Impact Fee Ordinance has not yet been litigated or decided, Plaintiffs should not be barred now from making such an argument. Although Coventry argues that the entering of the 2007 Consent Judgment bars any protest of fees being paid, the agreement seems to imply that only an additional \$200,000 would be assessed in addition to the regular amount of Impact Fees. Res judicata should not be applied in this case to bar Coventry Land’s challenge to the Amended Impact Fee Ordinance.

Voluntary Payment Doctrine

Finally, Coventry further argues that the voluntary payment doctrine prevents Plaintiffs from recovering previously paid Impact Fees. Conversely, Plaintiffs contend that the payment of Impact Fees by Linkevich under the Amended Impact Fee Ordinance was an involuntary payment made out of duress and compulsion. Since no other option existed besides paying the Impact Fee at the time it was due, Linkevich argues that this Court should hold that he paid the Impact Fee involuntarily, thereby making the voluntary payment doctrine inapplicable.

The voluntary payment doctrine “bars recovery of payments voluntarily made with full knowledge of the facts.” Cappalli v. BJ’s Wholesale Club, Inc., 904 F. Supp. 2d 184, 194-95 (D.R.I. 2012) (quoting Solomon v. Bell Atl. Corp., 9 A.D.3d 49, 55 (N.Y. App. Div. 2004)); see Whipple v. Wales, 47 R.I. 487, 488, 134 A. 22, 24 (1926). A voluntary payment is defined as “a payment made by a person of his or her own volition, without compulsion, or a payment made without a mistake of fact or fraud, duress, coercion or extortion[.]” 70 C.J.S. Payment § 107; see also 66 Am. Jur. 2d Restitution and Implied Contracts § 90 (stating that voluntary payments may be recovered based upon duress, fraud, or mistake). The underlying purpose of the voluntary payment doctrine is to “allow[] entities that receive payment . . . to rely upon these funds and to use them unfettered in future activities” without the risk of having to reimburse the payor amounts previously paid. Putnam v. Time Warner Cable of Se. Wisconsin, Ltd. P’ship, 649 N.W. 2d 626, 633 (Wis. 2002).

Originally applied in preventing attempts from payors to recoup taxes previously paid, the voluntary payment doctrine has also been applied to prevent the reimbursement of similar types of payments. See Dunnell Mfg. Co. v. Newell, 15 R.I. 233, 2 A. 766 (1886) (taxes

voluntarily paid cannot be recovered); Video Aid Corp. v. Town of Wallkill, 651 N.E.2d 886 (N.Y. 1995) (municipally assessed fees are not recoverable unless the payment was involuntary); see also Clarke v. Raposa, 713 A.2d 756 (R.I. 1998). In Clarke, after it was determined that a municipal water authority lacked power to assess various fees, our Supreme Court was tasked with determining whether fees previously paid were recoverable by the municipality's citizens. 713 A.2d at 757. The Court remanded this issue to the trial court to determine the voluntariness of the fee payments. Id. Applying the language of Clarke, this Court finds that the voluntary payment doctrine applies to both the payment of taxes and other similar payments, such as municipal fees.

However, in order for a payor to recover paid fees, the payment must not have been made voluntarily. By its nature, the assessment of taxes or fees are involuntary. Video Aid Corp., 651 N.E.2d at 888. When reviewing whether a payment of an impact fee is voluntary, the totality of the circumstances must be taken into account in order to determine whether a payor was paying under duress. Id.; Raintree Homes, Inc. v. Vill. of Long Grove, 389 Ill. App. 3d 836, 859, 906 N.E.2d 751, 771 (2009); Dreyfus v. Ameritech Mobile Commc'ns, Inc., 298 Ill. App. 3d 933, 938, 700 N.E.2d 162 (1998). When a payor acts to protect one's own property interest or to "avoid threatened interference with present liberty of person," formal protest is not required in order to recover those payments since the payments will be deemed to have been made under duress. Video Aid Corp., 651 N.E.2d at 888; Mercury Mach. Importing Corp. v. City of New York, 3 N.Y.2d 418, 425, 144 N.E.2d 400, 402 (1957); 66 Am. Jur. 2d Restitution and Implied Contracts § 93.

Coventry argues that Plaintiffs were paying voluntarily because other avenues existed whereby they could challenge the assessment of Impact Fees. See Video Aid Corp., 651 N.E.2d

at 888. In particular, Coventry contends that Plaintiffs could have sought a declaratory judgment or injunctive relief before paying an Impact Fee, or even paid under protest. This Court is not persuaded by these arguments. Although the levying of the fees assessed could be challenged through these avenues, Plaintiffs are alleging duress in that they are unable to carry on their business or livelihood unless the Impact Fee is paid. See Five Boro Elec. Contractors Ass'n. v. City of New York, 12 N.Y.2d 146, 150, 187 N.E.2d 774, 776 (1962). In Five Boro, the Court of Appeals of New York found that excessive licensing fees collected by the City of New York for electrician licenses were reimbursable on the ground that electricians had paid under duress. Id. Finding the payment of the licensing fees were similar to the business compulsion rule, the court reasoned the payments were not voluntary since plaintiffs would have been prevented from continuing their businesses until they paid the fee. Id.

In this case, Plaintiffs have raised a genuine issue of material fact as to why the voluntary payment doctrine should not be applied in this case. Here, Linkevich received a building permit to build his family home in Coventry on May 13, 2010. See Pls.' Ex. O. Linkevich alleges through his affidavit that he was responsible for paying the Impact Fee, and that he protested its assessment. Id. Without paying the Impact Fee, Linkevich would have been unable to occupy his newly constructed home. Id. Since Coventry's Amended Impact Fee Ordinance does not provide a way to challenge the assessment of an Impact Fee, there is a genuine issue as to whether Linkevich, given the totality of the circumstances, paid under duress. See Raintree Homes, 389 Ill. App. 3d at 865, 906 N.E.2d at 776. It is inappropriate for such an issue to be decided summarily as this issue must be determined by the trier of fact upon a review of the complete facts and circumstances of the case. See New Jersey Hosp. Ass'n v. Fishman, 283 N.J. Super. 253, 265, 661 A.2d 842, 848 (N.J. App. Div. 1995); 25 Am. Jur. 2d Duress and Undue

Influence § 7 (the issue to be determined when analyzing a claim of duress is “whether the particular party affected actually had a choice in exercising his or her will”).

Furthermore, it is unclear whether, at this point in time, Coventry Land has paid any Impact Fees. If they have paid Impact Fees, their payment presents another issue of fact. The issue that must be determined is, if they have paid Impact Fees, whether Coventry Land did so out of necessity to continue their business. See Raintree Homes, 389 Ill. App. 3d at 865, 906 N.E.2d at 776. It can be argued that Coventry Land would suffer major economic loss, damage to its goodwill, fines, and penalties if they continued their business without paying Impact Fees. In order for Coventry Land to receive a Certificate of Occupancy for each residential unit it develops, it first has to pay the Impact Fee. Coventry Land has already received approval to build seventy-five units in Coventry. However, if Coventry Land refuses to pay Impact Fees for each unit, it may lead to a catastrophic effect on their business. It is for the trier of fact to determine, based on the facts evidencing each way, whether Coventry Land’s payment of Impact Fees was made under compulsion to continue its business. See Five Boro, 12 N.Y.2d at 150, 187 N.E.2d at 776. Therefore, this Court finds a genuine issue of material fact as it relates to whether, given the totality of the circumstances, Plaintiffs have paid Impact Fees to Coventry under compulsion or duress.

B

Validity of the Amended Impact Fee Ordinance

Plaintiffs contend that Coventry’s Amended Impact Fee Ordinance should be held invalid by this Court as the ordinance was enacted in violation of the provisions of § 45-22.4-1. Namely, Plaintiffs argue that Coventry’s Town Council never adopted the 2010 Fee Report prepared by Sprague before amending the Impact Fee Ordinance. Further, Plaintiffs contend that

the 2010 Fee Report itself does not satisfy the requirements of § 45-22.4-1 in that it does not individually list the future needs of Coventry's public facilities that relate to new growth and development. Rather, Plaintiffs allege that the 2010 Fee Report is comprised of merely a wish list of upgrades and improvements Coventry wants to make to public facilities. Finally, Plaintiffs argue that the 2010 Amended Impact Fee Ordinance is void because Coventry has no basis to allocate a portion of the Impact Fee to the Parks and Recreation Department, and Sprague failed to use GAAP when determining the amount of the Impact Fee to be assessed. Conversely, Defendant argues that Coventry is in compliance with § 45-22.4-1. Further, Defendant contends summary judgment is inappropriate since to find that Coventry has not complied with the provisions of the Act involves a factual determination which cannot be resolved at the summary judgment stage.

Under the Act, an Impact Fee “must not exceed a proportionate share of the costs incurred or to be incurred by the governmental entity in accommodating the development.” Sec. 45-22.4-4(d)(2). Before assessing an Impact Fee, the municipality must conduct and adopt a needs assessment for the facilities that the Impact Fees are to be levied, with such needs assessment distinguishing existing needs and deficiencies from future needs. Sec. 45-22.4-4(a) (emphasis added). Impact Fees are to be based on actual costs of public facility expansion or reasonable estimates of the costs to be incurred.¹¹ Sec. 45-22.4-4(c) (emphasis added).

“It is well settled that when the language of a statute is clear and unambiguous, this Court must interpret the statute literally and must give the words of the statute their plain and ordinary meanings.” Accent Store Design, Inc. v. Marathon House, Inc., 674 A.2d 1223, 1226 (R.I. 1996). Moreover, when we examine an unambiguous statute, “there is no room for statutory

¹¹ The calculation of each Impact Fee is to be based on GAAP.

construction and we must apply the statute as written.” In re Denisewich, 643 A.2d 1194, 1197 (R.I. 1994). Further, interpretation of an ordinance receives the same rules of construction as do statutes. Murphy v. Zoning Bd. of Review of S. Kingstown, 959 A.2d 535, 541 (R.I. 2008).

It is equally well established that, when confronted with statutory provisions that are unclear or ambiguous, this Court, as final arbiter of questions of statutory construction, will examine statutes in their entirety and will “‘glean the intent and purpose of the Legislature ‘from a consideration of the entire statute, keeping in mind [the] nature, object, language and arrangement’ of the provisions to be construed.”’ In re Advisory to the Governor, 668 A.2d 1246, 1248 (R.I. 1996) (quoting Algieri v. Fox, 122 R.I. 55, 58, 404 A.2d 72, 74 (1979)).

Although it is beyond dispute that Coventry did not adopt the final Impact Fee value listed in the 2010 Fee Report as its actual Impact Fee, the Act does not state that this is a requirement.¹² In fact, the Act makes clear that the assessment of an Impact Fee has to be based only upon the reasonable estimates of the costs incurred by the Town as a result of the new developments. See § 45-22.4-4; see also Dolan v. City of Tigard, 512 U.S. 374, 390-91 (1994) (finding that a city must demonstrate a reasonable relationship between the required dedication of land and the impact a new development has on the community, but mathematical certainty is not required).

Applying this framework, it seems apparent that the Rhode Island Legislature intended only for municipalities to reasonably estimate the impact new developments would have on its current facilities. Mathematical certainty or exactness is not a requirement. Even though the Town Council did not precisely adopt the figure of the 2010 Fee Report, it cannot be stated

¹² Furthermore, there is no requirement that Coventry is required to specifically identify how the Impact Fees are to be allocated among its public departments. In fact, § 45-22.4-3 lists areas that can be considered when determining the Impact Fee.

today, without additional evidence, whether the figure adopted is unreasonable.¹³ See Consol. Realty Corp. v. Town Council of N. Providence, 513 A.2d 1, 2 (R.I. 1986) (finding zoning ordinances receive a presumption of validity); but see Grasso Serv. Ctr., Inc. v. Sepe, 962 A.2d 1283, 1290 (R.I. 2009) (stating ordinances will be held invalid if enacted in contravention of Rhode Island law). Coventry argues that Sprague's proposed Impact Fee value is based on current deficiencies which would be further exacerbated by expansion. Further, Coventry argues that the Act allows for the collection of Impact Fees to upgrade current facilities that will be needed to service the new growth. See § 45-22.4-2(c)(2). However, it is still to be determined whether the Impact Fee imposed by Coventry bears a reasonable relationship to the needs created by the new growth and development. See Upton v. Town of Hopkinton, 945 A.2d 670, 674 (N.H. 2008). Whether the Impact Fee figure adopted by Coventry is unreasonable is an issue to be proven at trial. Without addressing the additional arguments, this Court finds that summary judgment is inappropriate since there are genuine issues which can be resolved only after factual determinations are made. See O'Connor, 116 R.I. at 633, 359 A.2d at 353 (purpose of summary judgment is issue spotting).

IV

Conclusion

For the reasons stated above, Plaintiffs' Motion for Partial Summary Judgment is denied as there exists genuine issues of material facts relating to whether Coventry complied with the statutory provisions of the Act when it amended its Impact Fee Ordinance. Further, there exists a dispute as to whether Plaintiffs paid Impact Fees involuntarily, barring Coventry's reliance on the voluntary payment doctrine. Counsel shall prepare the appropriate judgment for entry.

¹³ In further support that this is the intent of the legislature, the Act provides, under § 45-22.4-6, an avenue for unused Impact Fees to be returned to those payors.



RHODE ISLAND SUPERIOR COURT

Decision Addendum Sheet

TITLE OF CASE: Rhode Island Builders Association v. Town of Coventry,
et al.

CASE NO: KB-2011-1134

COURT: Kent County Superior Court

DATE DECISION FILED: October 2, 2015

JUSTICE/MAGISTRATE: Stern, J.

ATTORNEYS:

For Plaintiff: Michael A. Kelly, Esq.

For Defendant: Michael A. DeSisto, Esq.
 Nicholas Gorham, Esq.