STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, SC. **SUPERIOR COURT**

(FILED: DECEMBER 16, 2011)

HARRISVILLE FIRE DISTRICT	:	
	:	
V.	:	**C.A. No. 07-4565**
	:	
OAKLAND-MAPLEVILLE FIRE DISTRICT	:	

DECISION

STERN, J. Plaintiff Harrisville Fire District seeks declaratory relief and compensatory damages to collect fire hydrant usage and service fees from Defendant Oakland-Mapleville Fire District. Both parties have filed for summary judgment. The dispute turns on whether there exists a genuine issue of material fact as to the Oakland-Mapleville Fire District's legal obligation to pay fire hydrant fees assessed by the Harrisville Fire District. Jurisdiction is pursuant to §§ 9-30-1, 8-2-14, and Super. R. Civ. P. 56.

I

FACTS & TRAVEL

Defendant Oakland-Mapleville Fire District ("Oakland-Mapleville") moves for summary judgment on all claims asserted against it by Plaintiff Harrisville Fire District ("Harrisville"). Oakland-Mapleville also moves for summary judgment on its counterclaims asserted against Harrisville. In response to this motion, Harrisville has objected, as well as filed its own cross-motion for summary judgment on all claims and counterclaims asserted in this matter. This

declaratory action arises from a dispute over the invoicing and nonpayment of service fees associated with forty-one fire hydrants installed by Harrisville within the Oakland-Mapleville Fire District. Both fire districts are located within the Town of Burrillville, Rhode Island.

Harrisville is a quasi-municipal corporation duly organized and incorporated pursuant to a charter granted by an Act of the General Assembly in 1910. (Pl. Exs. C & D.) Harrisville is authorized, among other things, to provide fire suppression and emergency medical and ambulance services within or without the territorial limits of the district or the town of Burrillville. (Pl. Ex. D: Charter Sec. C.l.) Oakland-Mapleville is likewise a quasi-municipal corporation organized and incorporated pursuant to a charter granted by the General Assembly in 1934. (Def. Mem. Ex. 5: Act to Incorporate Oakland-Mapleville.)

Pursuant to Harrisville's original charter, Harrisville was empowered to furnish and distribute water, light and power "throughout the district and beyond the same in the town of Burrillville."[1] (Pl. Ex. C: Original Charter Sec. 5.) Although amended, Harrisville's charter still empowers the district to "procure, distribute, and sell water within or without the territorial limits of the district or the town of Burrillville." (Pl. Ex. D: Current Charter Sec. C.2.) Harrisville is also authorized to "obtain, own, establish, operate, maintain, repair, improve, enlarge, and/or extend any pipe, conduit, fire apparatus, building, facilities, or property of any kind in order to carry out the purposes of the district." Id. at Sec. C.4. The charter additionally provides for the creation of a water department to facilitate such water procurement and distribution obligations pursuant to the charter. Id. at Sec. F. Meanwhile, pursuant to Section 11 of Oakland-Mapleville's charter, Oakland-Mapleville is authorized to "contract for and procure electricity

[1] The Court notes that in 1993, Harrisville's charter was amended to provide that Harrisville's right to sell light and power would be subject to approval of the public utilities commission; however, the district would not be considered itself a "public utility." (Harrisville Charter Sec. 3. and (J)(D).

and water for the purposes specified in [the charter]" subject to "the existing franchise contract between the town of Burrillville and the Pascoag Water Company." (Def. Ex. 4: Oakland-Mapleville Charter.) Oakland-Mapleville has neither a water supply nor a water distribution system to supply the residents of the district. (Pl. Ex. F: Mehrtens Aff. ¶ 6.)

Both districts are authorized by charter to tax the inhabitants of their respective districts in order to carry out the purposes of their charters. In addition, Harrisville is authorized to "fix rates and collect charges for the use or expansion of the facilities, or services rendered by or for any water, commodities, or other utilities furnished by [Harrisville]." This power to fix rates and collect charges is not limited to utilities furnished inside the Harrisville district. (Harrisville Charter Sec. 11.) Such fees charged to any city, county, town or water or fire district outside Harrisville, however, cannot exceed rates applicable to other consumers and users of such utilities or services. Id. at Sec. (J)C. Since 1993, Harrisville has installed, owned and maintained forty-one fire hydrants within the Oakland-Mapleville district (collectively, the "Hydrants"). The installation of these hydrants occurred in connection with three separate developments. The first installation in 1993 took place within a sixty-six home subdivision development known as Lynmar Estates. Town approval of the development was contingent upon the availability of a water supply system. (Pl. Ex. G: Lynmar Estates Agreement at 2.) Harrisville agreed to supply water to the subdivision; however, the expansion of water service into Oakland-Mapleville was subject to approval of the State Water Resources Board pursuant to G.L. 1956 § 46-15-2(a)(3).[2]

In an effort to facilitate the requisite Board approval, Harrisville and Oakland-Mapleville entered into a written agreement dated December 7, 1993 and titled "Agreement between the

[2] This section requires Board approval for a public water supplier's extension into a municipality or special water district in which the supplier had yet to legally supply water.

Harrisville Fire District and Oakland-Mapleville Fire District Relative to the Extension of Distribution Lines and Provision of Water within the Jurisdictional Boundaries of the Oakland-Mapleville Fire District" (hereinafter, the "Lynmar Estates Agreement") (Def. Ex. 3; Pl. Ex. G.). Pursuant to the Lynmar Estates Agreement, Harrisville was to remain solely responsible for the installation, repair, and maintenance of the water distribution lines and appurtenances thereto, including eight fire hydrants. (Lynmar Estates Agreement ¶ 2.) Also in accordance with the agreement, Harrisville agreed to hold harmless and indemnify Oakland-Mapleville from any loss or liability incurred in connection with the extension of the water distribution system. Id. Oakland-Mapleville was provided permission to access the eight fire hydrants for training and fire fighting purposes without any charge for water usage. Id. at ¶ 3. Importantly, in consideration of the use of the eight fire hydrants, the Agreement stated that "Harrisville shall impose a hydrant rental on Oakland-Mapleville in an amount which shall not exceed the amount of any taxes assessed on Harrisville by Oakland-Mapleville." Id. at ¶ 4. In its papers, Oakland-Mapleville contends that this specific provision was intended to result in a "wash" effect for the parties. Harrisville refers to the provision as a "Gentlemen's Agreement" designed to avoid further complication in a dispute existing at the time between the Town and Harrisville concerning Harrisville's municipal tax assessment.[3] (Mehrten Aff. ¶ 9.)

Subsequent to the Lynmar Estates installations, Harrisville expanded its water distribution lines and appurtenances, including fire hydrants, within Oakland-Mapleville on two occasions in commercial and industrial developments. Harrisville maintains that because it was authorized by charter to distribute water outside its district, and because it previously obtained State Water Resources Board approval for legal expansion into Lynmar Estates, it was not

[3] Ultimately, the Harrisville Charter was revised in 1999 by the General Assembly, declaring all assets, facilities, and operations of Harrisville to be tax exempt. (Pl. Ex. D: Current Charter.)

required to obtain consent from either Oakland-Mapleville or the Board for these subsequent expansions. Id. at ¶ 13. However, Oakland-Mapleville did approve the developments at issue as the local fire fighting entity. Thus, Harrisville maintains that Oakland-Mapleville was well aware of the water line expansions and fire hydrant installations, approving the developments without objection.

It is undisputed that use of the Hydrants by Oakland-Mapleville has been sporadic. It appears that on one occasion in either 2000 or 2001, Oakland-Mapleville requested permission to test the Hydrants' pressure, but Harrisville denied the request. (Def. Ex. 5: Def. Ans. to Int. No. 6.) Also, with the exception of one training session conducted on one of the hydrants at issue, the Hydrants have not been utilized by Oakland-Mapleville for fire suppression purposes. Id. at Ans. to Int. No. 8. Oakland-Mapleville further contends that Harrisville does not allow Oakland-Mapleville to fill its tanker truck (the primary water supply for fire suppression purposes in Oakland-Mapleville) at any of the hydrants at issue. Instead, Oakland-Mapleville is required to fill the tanker truck at a hydrant within the Harrisville jurisdiction.

Until March of 2006, Harrisville collected no rents, fees, or charges from Oakland-Mapleville or its residents in connection with the forty-one Hydrants at issue. Then, on March 14, 2006, Harrisville notified Oakland-Mapleville via letter of its intention to bill Oakland-Mapleville for a "hydrant use assessment" calculated at $371.00 per hydrant, per quarter (the "Assessments"). See Def. Ex. 8: Assessment Letter. Within the letter, Harrisville outlined several bases for its decision to discontinue its past practice of refraining from the imposition of hydrant fees. Specifically, Harrisville contended that it is uniform practice of water departments within the same state to internally assess hydrant fees on fire departments within the same jurisdiction, as well as fire departments outside the jurisdiction; that residents of Oakland-

Mapleville benefit from the existence of the hydrants and the maintenance of water pressure supplied to the hydrants in the form of increased fire suppression protection to their homes; that residents of Oakland-Mapleville benefit from the existence of the hydrants in the form of a more favorable insurance classification; that Oakland-Mapleville's fire department benefits from the hydrants and water supplied thereto in the form of practice and training opportunity; and that Harrisville residents incurred unwarranted costs in the form of subsidizing the hydrants, particularly in light of Harrisville's replacement of a water storage tank to maintain sufficient water pressure for firefighting purposes. Id.

Oakland-Mapleville refused to pay the Assessments, maintaining that the Lynmar Estates Agreement barred the collection of any fees concerning the eight hydrants within the Estates. In regard to the thirty-three other hydrants, Oakland-Mapleville contended that the Hydrants and water lines were installed without consent, and that Oakland-Mapleville derived no benefit from the existence of the Hydrants.

Harrisville filed its Verified Complaint on August 21, 2007, seeking declaratory relief in regard to Oakland-Mapleville's obligation or lack of obligation to pay the Hydrant Assessments, as well as compensatory damages and attorney's fees. In response, Oakland-Mapleville filed an Answer and Counterclaim, alleging breach of the Lynmar Estates Agreement and seeking attorney's fees and reimbursement of any Hydrant Assessment mandated by this Court. Oakland-Mapleville seeks such reimbursement in Count I pursuant to the indemnification clause within the Lynmar Estates Agreement. (Def. Ex. 2: Answer and Counterclaim.) Count II of the Counterclaim alleges that the Assessments imposed by Harrisville are in essence an illegal tax on the residents of Oakland-Mapleville.

Oakland-Mapleville filed its motion for summary judgment on October 22, 2009, seeking

denial of Harrisville's request for a declaratory ruling allowing Harrisville to impose the Assessments. In response, Harrisville filed an objection, as well as its own cross-motion for summary judgment. Originally set for hearing on January 5, 2010, and continued on several occasions over the months, this matter was heard by this Court on September 2, 2010.

A

Oakland-Mapleville's Argument

Oakland-Mapleville maintains that no genuine issue of material fact exists as to whether Harrisville is entitled to impose hydrant usage fees upon Oakland-Mapleville for the forty-one hydrants at issue. Specifically, Oakland-Mapleville contends that Harrisville has presented no evidence of a legal obligation and that Harrisville's suggestions of "uniform practice" are not applicable to the facts at hand. Oakland-Mapleville also argues that it has derived no benefit from the existence of the hydrants that would support any unjust enrichment theory proffered by Harrisville. While Oakland-Mapleville admits to utilizing one hydrant on a single occasion for training purposes, the district argues that such de minimis use is not a benefit for purposes of unjust enrichment, particularly in light of the fact that Oakland-Mapleville is not allowed to test the hydrants or fill its tanker trucks with the hydrants. Oakland-Mapleville further maintains that Harrisville has presented no evidence to support its claims of lower insurance premiums for the residents of Oakland-Mapleville and that the alleged increased benefit of better fire suppression protection is nonexistent given Oakland-Mapleville's ability to supply its firefighting needs with its tanker trucks and dry hydrants. Oakland-Mapleville also avers that any hydrant assessment imposed by Harrisville is, in essence, an illegal tax on the inhabitants of Oakland-Mapleville and an encroachment upon Oakland-Mapleville's own statutory authority to choose its water suppliers.

In regard to its Counterclaim, Oakland-Mapleville seeks a declaratory ruling that pursuant to the Lynmar Estates Agreement, Harrisville may not impose fees on the Lynmar Estates' hydrants, and that Harrisville is liable to Oakland-Mapleville for pressing such a claim for fees in violation of the agreement. Oakland-Mapleville also requests costs and attorney's fees incurred in connection with the instant litigation pursuant to the indemnification provision within the Lynmar Estates Agreement, and/or G.L. 1956 § 9-1-45.

B

Harrisville's Argument

Harrisville contends that in accordance with uniform practice, and pursuant to unjust enrichment principles, Harrisville is entitled to imposition of hydrant fees upon Oakland-Mapleville for the maintenance of, and continuous supply of water under sufficient pressure to, the hydrants. Harrisville avers that the factual circumstances at hand undisputedly meet the legal requisites to sustain a claim for unjust enrichment or quasi-contract. Specifically, Harrisville avers that Oakland-Mapleville benefits from the Hydrants by virtue of the stand-by availability of the Hydrants and water, as well as a more favorable insurance classification rating for Oakland-Mapleville residents. Harrisville argues that appreciation of this alleged benefit by Oakland-Mapleville without payment to Harrisville is inequitable and, moreover, detrimental to Harrisville. Further, Harrisville maintains that the Assessments are a reasonable charge for services rendered, and in no way a tax.

In regard to Oakland-Mapleville's motion for summary judgment as to its Counterclaim, Harrisville avers that the Lynmar Estates Agreement is, in fact, void as to the provision regarding hydrant assessments. Harrisville argues that the provision at issue constitutes an agreement not to tax and that such an agreement is void given the State's exclusive power to make such

exemption decisions. Specifically, Harrisville contends that Oakland-Mapleville could not legally agree to assess the personal property of Harrisville located in its district other than at its full assessed value, and therefore, Harrisville could not agree to impose hydrant fees other than in accordance with a full, fair, and non-discriminatory rate assessment. As a result, according to Harrisville, the object of the contract provision to equalize the Lynmar tax assessment and hydrant usage fees is illegal and the consideration illusory. In the alternative, Harrisville asserts that the provision at issue is void and unenforceable due to a lack of mutuality of obligation, because Harrisville has since become tax exempt, rendering any consideration illusory. In opposing Oakland-Mapleville's request for attorney's fees, Harrisville maintains that an obligation to pay a fee for services rendered is not a "loss or liability" subject to indemnification under the Lynmar Estates Agreement, that the indemnification provision only applies to third party claims, that the indemnification provision does not include reimbursement of attorney's fees, and that Harrisville has asserted a good faith claim for relief precluding an award of attorney's fees under § 9-1-45. Lastly, Harrisville maintains that Oakland-Mapleville failed to ask for relief as to Count II of its Counterclaim, thus waiving this claim.

Meanwhile, in further opposition to Harrisville's cross-motion, Oakland-Mapleville contends that the Lynmar Estates Agreement provision regarding hydrant fees is valid and enforceable. Specifically, Oakland-Mapleville argues that while the provision did call for equalization, it did not restrict Oakland-Mapleville's authority to tax the Lynmar Estates' hydrants. Oakland-Mapleville asserts that the provision was indeed supported by consideration in the form of "legal peace," in that Harrisville wished to avoid a dispute over the taxable status of its assets (the Hydrants) within Oakland-Mapleville, similar to the dispute existing at the time with the Town. In addition, Oakland-Mapleville points to Harrisville's amended Charter that

states that all existing contracts were to remain in full force and effect.

In regard to the indemnification provision, Oakland-Mapleville contends that there is ample authority to support the proposition that indemnity provisions are inclusive of attorney's fees, and are not limited to third party claims. Oakland-Mapleville emphasizes that Harrisville has presented insufficient evidence to establish a prima facie claim for unjust enrichment. Oakland-Mapleville asserts that the district in no way affirmatively accepted any alleged benefits flowing from the Hydrants, or was informed that there would be any expectation of payment for the Hydrants before installation. Oakland-Mapleville avers that particularly in the case of the Lynmar Estate Hydrants, there was a clear expectation of no payment because of the provision equalizing taxes and hydrant fees. The district also contends that its approval of the developments at issue do not constitute affirmative acceptance because the developments were approved for compliance with the Fire Code, and such compliance could have been achieved through alternate methods, such as wells or dry hydrants. In effect, Oakland-Mapleville posits that the installation of hydrants was the developers' choice and thus Oakland- Mapleville should not be held liable for payment on a "benefit" officiously conferred upon it by Harrisville.

Oakland-Mapleville also contends that no benefit from the Hydrants was ever appreciated. Oakland-Mapleville claims that the Hydrants at issue affect only 6% of the properties within the district, and that the district already had sufficient fire suppression protection before installation of the Hydrants. Oakland-Mapleville emphasizes that a hydrant at issue was used for training only once and that the district's tanker trucks are not allowed to use the Hydrants for filling purposes. Oakland-Mapleville contends that at the very least, there exists an issue of material fact as to whether the district is even able to derive a benefit from the existence of the Hydrants. In regard to Harrisville's claims of better insurance classifications

and increased tax revenues, Oakland-Mapleville argues that Harrisville has failed to present sufficient evidence to support either claim.[4]

In addition, Oakland-Mapleville challenges Harrisville's claim that it derives no benefit from the Hydrants. Oakland-Mapleville points out that Harrisville is in the business of water distribution and likely extended service into the developments at issue because they were profitable ventures. Oakland-Mapleville speculates that Harrisville considered the provision and maintenance of the Hydrants as part of the expected services that accompanied normal water service. Oakland-Mapleville argues that Harrisville presents no evidence that indicates the water rates charged to consumers in Oakland-Mapleville do not actually account for the costs of maintaining the Hydrants.

Oakland-Mapleville further argues that material issues of fact exist with respect to the reasonableness of the Assessments and emphasizes its argument that the Assessments are in actuality an illegal tax. Lastly, Oakland-Mapleville disputes Harrisville's contention that it abandoned Count II of its Counterclaim since it addressed such arguments in its memorandum accompanying its motion for summary judgment.

C

Supplemental Reply Arguments

In its supplemental reply, Oakland-Mapleville presents the Court with Subdivision and Land Regulations that stipulate in cases of new subdivisions, "when a public water system is available, water lines shall be installed and water stops shall be provided." (Def. Suppl. Mem. Ex. 1.) At the time of each development, no public water system was available. Thus, Oakland-Mapleville maintains the developments at issue were not exactly "contingent" upon Harrisville's

[4] Harrisville submits to this Court the Public Protection Classification Survey for Harrisville, but not for Oakland-Mapleville.

extension of its water system, as Harrisville contends. Instead, Oakland-Mapleville argues that Harrisville made an affirmative business choice to extend its water systems into those developments, as well as install and maintain the Hydrants.

Harrisville refutes Oakland-Mapleville's contention that Oakland-Mapleville receives no benefits from the hydrants and that, in fact, the hydrants were not the choice of Oakland-Mapleville. Even so, town subdivision requirements and state law mandate the installation of hydrants. Harrisville contends that Oakland-Mapleville did indeed have a choice in that it could have rejected the hydrants or proscribed using the hydrants. In sum, Harrisville maintains that a cause of action for quasi-contract has been established as there has been a benefit conferred by Harrisville on Oakland-Mapleville, Oakland-Mapleville received that benefit, and it would be entirely inequitable for Oakland-Mapleville to retain that benefit without paying for it.

D

Additional Supplemental Arguments

The Court heard oral argument on September 9, 2010. It thereafter directed the parties to file additional supplemental memoranda to respond to points made at the oral arguments.

In its supplemental reply memorandum, Oakland-Mapleville addresses Harrisville's contention that Oakland-Mapleville never rejected the Hydrants. Oakland-Mapleville disagrees, noting Oakland-Mapleville had made it clear to Harrisville that it could shut off service to the hydrants, which Harrisville ultimately refused to do. Oakland-Mapleville points out that this refusal to shut off the hydrants supports Oakland-Mapleville's argument that Harrisville cannot sustain its unjust enrichment and quasi-contractual theories. Moreover, Oakland-Mapleville notes that the hydrants at issue benefit a smaller area within the district and, as such, it would be inequitable to require the entire district to bear the costs. Rather, it asserts, the costs should be

borne by the property owners who enjoy the benefits of the hydrants.

In its Supplemental Reply Memorandum, Harrisville reiterates that Oakland-Mapleville has reaped the benefits of and has failed to reject the hydrants. Further, Harrisville maintains that the consideration in the Lynmar Estates Agreement was illusory in that any agreement to equalize taxes and rates is unenforceable. Harrisville posits that both law and custom dictate that the imposition of hydrant usage fees is not a tax. Finally, Harrisville believes it received no benefit from extending its water distribution system by installing the hydrants. Harrisville concludes by reasoning that any decision against Harrisville would effectively oblige Harrisville to pursue relief in federal court in the wake of suits by property owners, Oakland-Mapleville, and the state Fire Marshal after Harrisville disables the hydrants. As such, Harrisville contends that it should prevail on the basis of such factors as historical practice, custom, Rhode Island law, and the promotion of public safety.

II

STANDARD OF REVIEW

On a summary judgment motion, this Court reviews the evidence and draws all reasonable inferences in the light most favorable to the nonmoving party. Chavers v. Fleet Bank (RI), N.A., 844 A.2d 666, 669 (R.I. 2004). On such a motion, the Court is to determine only whether a factual issue exists. It is not permitted to resolve any such factual issues as the emphasis is on issue finding, not issue determination. O'Connor v. McKanna, 116 R.I. 627, 633, 359 A.2d 350, 353 (1976); Palazzo v. Big G Supermarkets, Inc., 110 R.I. 242, 245, 292 A.2d 235, 237 (1972); Slefkin v. Tarkomian, 103 R.I. 495, 496, 238 A.2d 742 (1968). "Summary judgment is appropriate if it is apparent that no material issues of fact exist and the moving party is entitled to judgment as a matter of law." Chavers, 844 A.2d at 669. A party opposing a

motion for summary judgment "carries the burden of proving by competent evidence the existence of a disputed material issue of fact and cannot rest on allegations or denials in the pleadings or on conclusions or legal opinions." Id. at 669-70 (quoting United Lending Corp. v. City of Providence, 827 A.2d 626,631 (R.I. 2003)).

III.

JURISDICTION

It is well settled that a declaratory judgment "is neither an action at law nor a suit in equity but a novel statutory proceeding . . . ." Northern Trust Co. v. Zoning Bd. of Review of Town of Westerly, 899 A.2d 517, 520, n.6 (R.I. 2006) (quoting Newport Amusement Co. v. Maher, 92 R.I. 51,53, 166 A.2d 216,217 (1960)). This Court acknowledges that the purpose of the Uniform Declaratory Judgments Act ("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). Thus, the UDJA grants broad jurisdiction to the Superior Court to "declare rights, status, and other legal relations whether or not further relief is or could be claimed." 9-30-1; see also Sullivan v. Chafee, 703 A.2d 748, 751 (R.I. 1997) (stating that trial court's "decision to grant or to deny declaratory relief under the [UDJA] is purely discretionary[]").

IV

ANALYSIS

A

Validity of the Lynmar Estates Agreement Provision Regarding Hydrant Usage Fees

The elements of a valid contract are offer, acceptance, consideration, mutuality of agreement and mutuality of obligation. See Smith v. Boyd, 553 A.2d 131 (R.I. 1989);

Lamoureux v. Burrilville Racing Assn., 91 R.I. 94, 161 A.2d 213 (R.I. 1960); see also DeAngelis v. DeAngelis, 923 A.2d 1274, 1279 (R.I. 2007). The court must make "the predicate findings of offer, acceptance, consideration and breach requisite to determining a breach of contract claim." Gorman v. St. Raphael Academy, 853 A.2d 28, 33 (R.I. 2004). A breach of contract claim may be established when a party demonstrates a "violation of a contractual obligation, either by failing to perform one's promise or by interfering with another party's performance." Black's Law Dictionary (9th ed. 2009).

Indeed, a contract is a consensual endeavor. Boyd, 553 A.2d at 133 (citing Farnsworth, § 3.1 at 106). To form a valid contract, each party to the contract must have the intent to promise or be bound. Id. (citing J. Koury Steel Erectors, Inc. v. San-Vel Concrete Corp., 120 R.I. 360, 365, 387 A.2d 694, 697 (1978)). In general, assent to be bound is analyzed in two steps: offer and acceptance. Id.

Here, the parties do not dispute that in regard to the hydrant fee provision within the Lynmar Estates Agreement, the requisite offer and assent took place. Nor do the parties dispute that at the time of execution, there existed valid consideration, mutuality of agreement, and mutuality of obligation. Nonetheless, Harrisville maintains that despite the satisfaction of the elements required for contract formation upon execution of the Lynmar Estates Agreement, contract formation was rendered impossible based on the alleged illegal nature of the hydrant fee provision.

1

Illegal and Void Ab Initio

Harrisville maintains that the hydrant fee provision in Section 4 of the Agreement is illegal and void ab initio to the extent the parties agreed not to assess property taxes and/or

charge hydrant usage fees. Essentially, Harrisville argues that the provision is an agreement not to tax Harrisville's assets within Oakland-Mapleville, or to impose less than the full and fair assessment of taxes, and that such a decision lies solely within the province of the General Assembly.

Cities, towns and other municipal bodies may make exemption and assessment decisions only when such taxation authority is explicitly conferred by statute. McTwiggan v. Hunter, 19 R.I. 265 (1895). Oakland-Mapleville's charter grants such taxation power to the District. Specifically, the charter states that taxes "be assessed by the assessors [of Oakland-Mapleville] on the taxable inhabitants and the property therein according to the last valuation made by the assessor of the town." This Court determines that the language "[p]roperty therein" includes property such as water lines and hydrants. See City of Providence v. Hall., 49 R.I. 230, 142 A. 156 (R.I. 1928) (City's reservoir property, as part of waterworks system, held taxable by town in which located).

The subject hydrant fee provision reads as follows:

> "In consideration of the use of said fire hydrants, Harrisville shall impose a hydrant rental on Oakland-Mapleville in an amount which shall not exceed the amount of any taxes assessed on Harrisville by Oakland-Mapleville."

Indeed, an agreement between the Districts to exempt from taxation Harrisville's water lines and hydrants within Lynmar Estates would be unenforceable on its face. See McTwiggan, 19 R.I. 265 (Where a city council enters into a contract to exempt certain property of a corporation from taxation in consideration of the corporation transferring to it other property, the fact that the city has accepted the benefits of the contract will not estop it from avoiding the contract on the ground that the city council had no authority to enter into it.). What Harrisville fails to

recognize, however, is that the plain language of this provision unambiguously creates an agreement to equalize assessed taxes and fees. The provision is not an agreement to refrain from assessing property taxes on the part of Oakland-Mapleville in exchange for Harrisville's promise to refrain from assessing hydrant fees. Instead, the provision creates a "wash effect," in that Harrisville agreed to charge fees not in excess of the property taxes assessed upon the eight Lynmar Estates hydrants.[5] Whether Oakland-Mapleville actually assessed taxes in accordance with its statutory duty is not relevant to this issue. Contracts containing unambiguous language must be construed according to their plain and natural meaning. See Garden City Treatment Center, Inc. v. Coordinated Health Partners, 852 A.2d 535, 542 (R.I. 2004). Accordingly, Harrisville's void ab initio argument fails.

2

Lack of Mutuality of Obligation and Failure of Consideration

In the alternative, Harrisville attacks the current enforceability of the hydrant fee provision based on an alleged lack of mutuality of obligation and vanishing consideration that occurred upon Harrisville's acquisition of a tax exempt status in 1999. Specifically, Harrisville contends that consideration for the Agreement is now illusory since Oakland-Mapleville can no longer assess taxes on Harrisville's property within the Oakland-Mapleville district. In countering this argument, Oakland-Mapleville avers that the consideration that supported the hydrant fee agreement was in actuality "legal peace," in that Harrisville effectively avoided a legal dispute as to the taxability of its property similar to its dispute with the Town.

In addition to mutual assent, a bilateral contract requires mutuality of obligation, which is

[5] It should be noted that on page 29 of its memorandum, Harrisville argues that it could not agree to impose hydrant fees "other than in accordance with a full, fair, and non-discriminatory rate assessment." However, Harrisville provides no support or authority for this proposition.

achieved when both parties are bound legally by the making of reciprocal promises. Davis v. Ford Motor Credit CO., 882 A.2d 557, 560 (R.I. 2005) (quoting Filippi v. Filippi, 818 A.2d 608, 624 (R.I. 2003)). Mutuality of obligation fulfills the consideration requirement of contracts. Id. To determine consideration, the Restatement (Second) of Contracts § 71 (1981) employs a bargained-for exchange test. Under this test, something is bargained-for if it is sought by the promisor in exchange for his promise and is given by the promisee in exchange for that promise. Restatement (Second) of Contracts § 71 at 623-24.

Here, an examination of the Lynmar Estates Agreement as a whole reveals that the promise concerning equalization of the property taxes and the hydrant fees is not the only promise at issue. The Agreement addresses Oakland-Mapleville's use of the hydrants as well. The imposition of hydrant fees, not to exceed the taxation amount, was the consideration for Harrisville's agreement to allow Oakland-Mapleville's use of the eight hydrants for training and firefighting purposes. See Sec. 3 and 4 of Lynmar Estates Agreement. While Harrisville is correct in that it cannot now impose hydrant rental fees given that any fee would exceed the amount of taxation (zero), the intent of the parties was that the fees and the taxes would cancel each other out no matter what the assessed value and would always produce a zero balance. As Judge Learned Hand once indicated, "[a] contract has, strictly speaking, nothing to do with the personal, or individual, intent of the parties. A contract is an obligation attached by * * * force of law to certain acts of the parties, usually words, which ordinarily accompany and represent a known intent." Smith v. Boyd, 553 A.2d 131 (R.I. 1989) (citing Hotchkiss v. National City Bank, 200 F. 287, 293 (S.D.N.Y. 1911)).

Here, an objective interpretation of the parties' intent reveals that imposition of the hydrant fees was consideration for Oakland-Mapleville's use of the hydrants pursuant to Section

3 of the Agreement. Then, pursuant to Section 4 of the Lynmar Estates Agreement, the parties created the separate "wash effect" provision to avoid potential litigation. Importantly, neither District disputes that the avoidance of discord over the taxable status of the hydrants was the reason for including what Harrisville itself terms as a "Gentlemen's Agreement." In fact, in the Affidavit of Donald Mehrtens, submitted by Harrisville, Mr. Mehrtens states that (1) "at the time, Harrisville was in an ongoing dispute with the Town of Burrillville regarding whether . . . its assets, facilities, and/or operations were exempt from municipal tax assessment," and (2) that in part to avoid expanding that dispute to include Oakland-Mapleville or dealing with the determination and assessment of a hydrant usage fee, a "gentlemen's agreement was included." (Pl. Ex. F: Mehrten Aff. ¶¶ 8-9.)

Generally, a claim forborne, if premised on an honest belief in its justness, constitutes consideration sufficient to support a promise even though, if prosecuted, it might have been defeated. Lapan v. Lapan, 100 R.I. 498, 217 A.2d 242 (1966); see also 17A Am. Jur. 2d Contracts § 149 (forbearance to prosecute a legal claim is sufficient consideration to support a contract). Here, Harrisville admits that the inclusion of the hydrant fee provision in Section 4 of the Lynmar Estates Agreement was to avoid dispute with Oakland-Mapleville over the taxation of the hydrants and water lines. Based on the parties' intent to avoid such a dispute, coupled with the parties' clear intent to create a zero balance for fees and taxes, Harrisville's lack of consideration argument is not persuasive. This Court therefore finds that the provisions of the Agreement at issue are valid and that Oakland-Mapleville is not liable to Harrisville for hydrant fees assessed in regard to the eight hydrants within Lynmar Estates.

3

Quantum Meruit Theory

This Court must now determine whether Harrisville is entitled to assess hydrant fees on the remaining Hydrants pursuant to quasi-contract and unjust enrichment theory. The Rhode Island Supreme Court has held that "actions brought upon theories of unjust enrichment and quasi-contract are essentially the same." R & B Electric Co. v. Amco Construction Co., 471 A.2d 1351, 1355 (R.I. 1984). Furthermore, it is well settled that in order to recover under quasi-contract for unjust enrichment, a plaintiff is required to prove three elements: (1) a benefit must be conferred upon the defendant by the plaintiff, (2) there must be appreciation by the defendant of such benefit, and (3) there must be an acceptance of such benefit in such circumstances that it would be inequitable for a defendant to retain the benefit without paying the value thereof. Bouchard v. Price, 694 A.2d 670, 673 (R.I. 1997). Our Supreme Court has also noted that the most significant determination is whether enrichment to the defendant is unjust. R & B Electric Co., 471 A.2d at 1356 (citing Paschall's, Inc. v. Dozier, 219 Tenn. 45, 57 (1966)).

Here, Harrisville contends that Oakland-Mapleville is undoubtedly benefited by the Hydrants in the form of stand-by fire suppression capabilities, more favorable insurance classifications for residents, and additional fire tax revenue as the result of improved real estate that would not have been approved for development absent installation of water lines and hydrants. In addition, Harrisville points to Oakland-Mapleville's use of a hydrant for training purposes, as well as apparent usage of a hydrant during an emergency run on July 11, 2006, subsequent to Harrisville's notification to Oakland-Mapleville of its intent to impose the Assessments. (Pl. Reply Mem. at 5.)

Conversely, Oakland-Mapleville contends that Harrisville has adduced no competent

evidence showing that an actual benefit was conferred. Oakland-Mapleville asserts that the Hydrants benefit a mere six percent (6%) of the properties in the District and that it has sufficient fire protection aside from the Hydrants. Oakland-Mapleville further maintains that Harrisville has produced no evidence concerning insurance classifications within Oakland-Mapleville and no evidence that the Hydrants contributed directly to increased fire tax revenues. In addition to these arguments, Oakland-Mapleville contends that Harrisville has affirmatively prevented Oakland-Mapleville from using and maintaining the Hydrants.

This Court questions the competency and relevance of the evidence submitted by Harrisville in support of its contentions that (1) Oakland-Mapleville benefits through better insurance classifications for residents and (2) that the district benefits by increased fire tax revenues. Harrisville submits to this Court the Public Protection Classification survey for its own district and fails to present evidence as to whether classifications are indeed improved by the Hydrants' presence in Oakland-Mapleville. In regard to the fire tax argument, Harrisville submits the annual fire tax revenue figures for the Developments at issue. However, this evidence does not in and of itself prove a benefit stemming from installation of the Hydrants. The Development very well may have been approved with alternate methods of fire protection. However, despite these shortcomings in Harrisville's evidence, Oakland-Mapleville cannot escape the fact that while it may have been prevented from using the Hydrants upon request in the past, it certainly has the capability of accessing the Hydrants in an emergency situation, as demonstrated by prior usage admitted by Oakland-Mapleville. While this past usage may be de minimis as Oakland-Mapleville contends, it is not the actual past use that is of import; it is the capability to access the Hydrants and the increased protection from which Oakland-Mapleville benefits. Thus, this Court finds that as a matter of law, Oakland-Mapleville benefits from the

existence of the Hydrants and that the first prong of the unjust enrichment analysis is satisfied.

Oakland-Mapleville's main contention is that it neither accepted nor appreciated any benefit conferred by the Hydrants. Oakland-Mapleville further argues that expansion into the Developments at issue occurred without Oakland-Mapleville's consent, effectively creating a situation where a "benefit" was unilaterally forced upon the District.

An essential prerequisite to unjust enrichment liability is the acceptance by the one sought to be charged of the benefits rendered under such circumstances as are reasonable to notify them that the one performing the services expected to be compensated by them. See 66 Am. Jur. 2d Restitution and Implied Contracts § 15. A plaintiff must show that the defendant voluntarily accepted a benefit which would be inequitable to retain without payment. Id. Due to the voluntary nature of such acceptance, a basic principle underlying the rules in regard to restitution is that a person who officiously confers a benefit upon another is not entitled to restitution therefor. See 66 Am. Jur. 2d Restitution and Implied Contracts § 14; see also Restatement (Second) of Restitution § 2. Officiousness means "interference in the affairs of others not justified by the circumstances under which the interference takes place." 66 Am. Jur. 2d Restitution and Implied Contracts § 14. Importantly, and relevant to the matter at hand, "officious volunteers" are those who introduce themselves into matters which do not concern them and do something which they are neither legally nor ethically bound to do. Id. Where a person has officiously conferred a benefit upon another, the other is enriched but is not considered to be unjustly enriched. Id.

Here, this Court does not find Harrisville to be an officious actor. Counter to Oakland-Mapleville's belief, Harrisville's extension into the Developments at issue was not an "involuntary encroachment." Pursuant to Burrillville's Subdivision & Land Development

Regulations, when utilities exist in the general area of a new subdivision, the developer will be either required or encouraged to extend those utilities. See Subdivision Regs. § 10-9.5. Further, when a public water system is available, water lines shall be installed and water stops shall be provided in accordance with the rules and regulations of the appropriate Fire District. Id. § 10-9.5(B). Moreover, the Subdivision Regulations require that fire hydrants shall be installed in all subdivisions where public water supply systems are installed. Id. § 10-9.5(E).

It is undisputed that Oakland-Mapleville maintains no public water supply. It is also undisputed that Harrisville had statutory authority to distribute water to neighboring districts and extend and maintain its water distribution system. The Town's Subdivision Regulations require connection to a public water supply if one is nearby to a proposed development. Harrisville worked with the developers and the Town to effectuate these connections and extensions accordingly. Moreover, it is important to remember that Oakland-Mapleville is a fire district. At times, the parties argue as if they are discrete municipalities. Subdivision development is regulated by the Town of Burrillville, and Oakland-Mapleville's consent to the water distribution extension was not required. Instead, what was required was Oakland-Mapleville's approval of the development plans for Fire Code compliance. Pursuant to the Oakland-Mapleville's Uniform Fire Code, "an approved water supply capable of supplying the required fire flow for fire protection shall be provided to all premises upon which facilities, buildings, or portions of buildings are hereafter constructed . . . ." Additionally, "the number and type of fire hydrants and connections to other approved water supplies shall be capable of delivering the required flow and shall be provided at approved locations." (Def. Reply Ex. 3: Uniform Fire Code Sec. 18.3.1 and 18.3.3.) The Fire Code makes it clear that "other approved water supplies," such as reservoirs, elevated tanks, and fire department tanker shuttles are to be utilized only "when no

adequate or reliable water distribution system exists." Id. §18.3.2. Thus, while Oakland-Mapleville contends that it approved the fire hydrant system because it was one of several options compliant with the Code, the language of the Code explicitly provides that hydrants are the preferred and required method of fire protection when a reliable water system is available.

In addition, the extension by Harrisville into the Developments did not conflict with Oakland-Mapleville's statutory authority to procure water by contract. This authority, granted in Oakland-Mapleville's charter, does not include the authority to privately contract for the physical extension of a public water supply into its borders. Based on the evidence submitted by the parties, this Court concludes that Harrisville was not an officious actor, and this Court finds that Oakland-Mapleville appreciated and accepted the benefit conferred by the Hydrants at issue in satisfaction of the second prong of the unjust enrichment analysis.

4

Unjust Enrichment

Determining what constitutes a just or unjust result under the third prong requires examination of the facts of the particular case and balancing of the equities. R & B Electric Co., 471 A.2d at 1356. Whether there exists unjust enrichment may not be determined from a limited inquiry confined to an isolated transaction; it must be a realistic determination based on a broad view of the human setting involved. 66 Am. Jur. 2d Restitution and Implied Contracts § 9 (citing McGrath v. Hilding, 41 N.Y.2d 625, 394 N.Y.S.2d 603, 363 N.E.2d 328 (1977). Here, upon review of the factual circumstances and a balancing of the equities, this Court finds that it would be unjust for Oakland-Mapleville to retain the benefit of the Hydrants (exclusive of the Lynmar Estates hydrants) without payment of the value thereof.

Various factors are compelling and weigh in favor of Harrisville on this prong. First,

Oakland-Mapleville enjoys the benefit of increased fire suppression capability at no expense, while Harrisville incurs the cost differential in maintaining sufficient water pressure to the Hydrants. Harrisville also maintains the Hydrants. Furthermore, Harrisville and Oakland-Mapleville have a special relationship in that they are neighboring Fire Districts within the Town of Burrillville. The districts share fire suppression and emergency response duties in the Town, including within each other's districts. Integrating water distribution between the Fire Districts appears to be an accepted practice (until now) and necessary for new development. At the same time, the Town's Subdivision Regulations and the cited Fire Code provisions indicate that water lines and hydrants are the preferred method of water distribution and fire protection when available. It would be unjust for Oakland-Mapleville to benefit from the Hydrants' presence without reasonable payment for the installation that Harrisville performed pursuant to Town mandates. Additionally, public safety may be compromised if Harrisville was forced to discontinue water service to the Hydrants. Finally, while use of the Hydrants has been sporadic at best, it is clear that the Hydrants have been used by Oakland-Mapleville in some capacity and that Oakland-Mapleville can readily access the Hydrants in the event of an emergency.

While it very well may be the practice of fire districts in this State and throughout the nation to impose fees on other districts and municipalities in connection with hydrant service, Harrisville has failed to present this Court with competent evidence of such practice aside from conclusory statements in its supporting affidavits. Thus, its uniform practice argument and de minimis cost theory are not persuasive. Harrisville asks this Court to assume that the disparity between Harrisville's fire tax rate and Oakland-Mapleville's fire tax rate is in part due to Oakland-Mapleville residents paying less than the cost of the fire protection they actually receive. This Court cannot on the basis of the evidence before it make such an assumption.

Based on the foregoing, this Court finds that Harrisville has met its burden in showing that no genuine issue of material fact exists as to Oakland-Mapleville's unjust enrichment by virtue of the Hydrants, exclusive of those located within Lynmar Estates. Therefore, Oakland-Mapleville is obligated to pay reasonably calculated assessments.

5

Reasonableness of Fees

While liability of Oakland-Mapleville to Harrisville for payment of the Assessments is clear, whether or not the fees assessed by Harrisville are reasonable is not. Harrisville submits to this Court an expert affidavit detailing the intricate calculations of applicable water rates and hydrant fees. However, this Court is not satisfied that this affidavit proves as a matter of law that the fees are reasonable. Oakland-Mapleville is not allowed to use the Hydrants to fill their tanker trucks; nor are they allowed to test or maintain the Hydrants. Any use for training purposes appears to be allowed only by request and permission. The Court cannot be certain that these situational factors are accounted for in the study, and Oakland-Mapleville should be afforded the opportunity to independently evaluate whether the Assessments are reasonable if it so chooses. Moreover, questions of reasonableness are typically left for the trier of fact. Traversa v. Smith, 437 A.2d 1358, 1360 (R.I. 1981) ("[t]he reasonableness of the amount of a claim and the value of the services rendered are matters properly within the province of the factfinder").

6

Oakland-Mapleville's Counterclaim

A party establishes a breach of contract claim when that party demonstrates a "violation of a contractual obligation, either by failing to perform one's promise or by interfering with

another party's performance." Black's Law Dictionary (9th ed. 2009). When performance of a duty under a contract is due, any non-performance is a breach. See Restatement (Second) of Contracts § 235.

Here, Harrisville failed to perform its promise by imposing the hydrant fee assessments in regard to the hydrants within Lynmar Estates. As discussed above, the Lynmar Estates Agreement provisions at issue are valid and enforceable and demonstrate the intent of the parties to create a "wash effect" between hydrant fees and any property taxes. By invoicing Oakland-Mapleville for assessments on hydrants within Lynmar Estates, Harrisville effectively breached the Lynmar Estates Agreement.

Ordinarily, when a court concludes that there has been a breach of contract, it enforces the broken promise by protecting the expectation that the injured party had when it made the contract. It does this by attempting to put him or her in as good a position as it would have been in had the contract been performed as promised; that is, had there been no breach. See Riley v. Germain, 723 A.2d 1120, 1122 (R.I. 1999); Wells v. Uvex Winter Optical, Inc., 635 A.2d 1188, 1193 (R.I. 1994) (citing R.I. Bridge & Turnpike Authority v. Bethlehem Steel Corp., 119 R.I. 141, 166, 379 A.2d 344, 357 (1977)). Here, Oakland-Mapleville has not yet paid the outstanding invoices concerning the Lynmar Estates hydrants and thus has suffered no damages beyond the cost of this litigation. Therefore, this Court must determine whether Oakland-Mapleville is indeed entitled to reimbursement of such costs and attorney's fees.

Given a proper contractual, statutory, or other legal basis to do so, the award of attorney fees rests within the sound discretion of the trial justice. Women's Development Corp. v. City of Central Falls, 764 A.2d 151 (2001). Attorney fees are recoverable, under Rhode Island law, only when there was complete absence of a justiciable issue of either law or fact. G.L. 1956 § 9-1-45.

Here, this Court finds that statutory attorney's fees are not available to Oakland-Mapleville, despite its prevailing on its breach of contract claim because Harrisville presented a justiciable issue as to whether the Lynmar Estates Agreement was still in force. See e.g. Ross-Simons of Warwick, Inc. v. Baccarat, Inc., 66 F. Supp.2d 317 (1999), affirmed 217 F.3d 8 (finding that although the defendant was unsuccessful, it had an arguable defense as to the validity of the agreement).

Although statutory attorney's fees pursuant to § 9-1-45 are denied to Oakland-Mapleville, there remains the possibility that Oakland-Mapleville may be entitled to reimbursement under contractual language within the Lynmar Estates Agreement itself. The indemnification provision at issue reads as follows: "Harrisville agrees to indemnify and hold harmless Oakland-Mapleville from any loss or liability in connection with the extension of Harrisville's distribution system within Oakland-Mapleville's jurisdictional boundaries." (Lynmar Estates Agreement Sec. 2.) Importantly, that sentence is contained in the same paragraph with, and directly follows, this statement: "Harrisville shall be solely responsible for the installation, repair and maintenance of said water distribution lines and appurtenances thereto, including fire hydrants." Id. In examining and construing contract language, the Court must view the document "in its entirety and its language must be given its plain, ordinary, and usual meaning." Garden City Treatment Center, Inc. v. Coordinated Health Partners, 852 A.2d 535, 542 (R.I. 2004). Here, the fact that the indemnification provision is incorporated within the same paragraph as the provision addressing installation, repair, and maintenance is significant. Such placement indicates that the parties intended the indemnification provision to encompass any and all losses and liabilities stemming from the physical extension of the water distribution system, not hydrant assessments as Oakland-Mapleville contends. See 41 Am. Jur. 2d Indemnity § 14 (indemnity contracts

should be construed to give effect to the intentions of the parties).

Even if this Court were to characterize the hydrant fees as a "loss or liability," there remain the issues of whether the indemnification provision is limited to third party claims, and whether the provision includes the recovery of attorney's fees. The Rhode Island Supreme Court has yet to rule upon whether indemnification for attorney's fees must be expressly stated within an indemnification provision. However, it is widely held that if the indemnification clause at issue does not specifically say that it includes attorney's fees, they are excluded. 41 Am. Jur. 2d Indemnity § 30. Because this Court interprets the indemnification provision to exclude counsel fees, the Court need not reach the issue of first party versus third party claims.

Based on the foregoing, this Court finds that while Harrisville has breached the Lynmar Estates Agreement by assessing hydrant fees, Oakland-Mapleville, having not paid the Assessments, has suffered no damages beyond the cost of this litigation. For Oakland-Mapleville, these costs are not recoverable under either statutory law or pursuant to the contractual language in the indemnification agreement.

B

Legality of Assessments

As a preliminary matter, this Court finds that Oakland-Mapleville has not waived Count II of its Counterclaim. Count II seeks a declaration that the hydrant fees are illegal taxes by nature.

Pursuant to its Charter, Harrisville is authorized to "fix rates and collect charges for the use or expansion of the facilities of or services rendered by or for any water, commodities, or other utilities furnished by [Harrisville] . . . ." This power to fix rates and collect charges is not limited to utilities furnished inside the Harrisville district. (Harrisville Charter Sec. 11.) Such

fees charged to any city, county, town or water or fire district outside Harrisville, however, cannot exceed rates applicable to other consumers and users of such utilities or services. Id. at Sec. (J)C. Oakland-Mapleville contends that the imposition of hydrant fees amounts to an unauthorized tax on the residents of its District because a benefit is not conferred to the public at large. Oakland-Mapleville asserts any benefit conferred by the Hydrants inures to solely the small number of properties adjacent to the Hydrants.

The distinction between a fee and a tax is crucial. A state or local governmental entity may not impose a tax without express authorization from the Rhode Island General Assembly. A municipality's ability to tax is limited to the extent that such power is delegated by the State Legislature. See Cabana v. Littler, 612 A.2d 678, 682 (R.I. 1992) (quoting In re Warwick Financial Council, 39 R.I. 1, 12-13, 97 A. 21, 25 (1916)). This restriction is founded in article 13, section 5, of the Rhode Island Constitution, which provides that "[n]othing in this article shall be deemed to grant any city or town the power to levy, assess and collect taxes or borrow money, except as authorized by the general assembly." Indeed, "authority to tax is granted only by unequivocal instructions found in the Rhode Island Constitution and statutes enacted by the Rhode Island legislature. Rhode Island courts must assiduously protect the people from abuse of the government's taxing authority by requiring strict adherence to these unequivocal questions." Id. at 684.

In Kent County Water Authority v. R.I. Department of Health, the Rhode Island Supreme Court considered the distinction between a fee and a tax. In that case, our Supreme Court instructed that the pivotal issue for the Court to consider is whether the goal of the fee is to increase revenue or defray costs. See 723 A.2d 1132 (R.I. 1999). Thus the burden falls upon Oakland-Mapleville to show that the hydrant fees charged are not related to the costs of

maintenance of the Hydrants and provision of water pressure thereto. Here, Oakland-Mapleville has failed to establish that the fees are revenue measures and are not designed to offset the costs of maintaining the Hydrants.

V

CONCLUSION

For the above reasons, the Court makes the following declaratory rulings. The Lynmar Estates Agreement provisions at issue are valid as a matter of law. Accordingly, Oakland-Mapleville is not obligated to pay the assessments on these eight hydrants. Oakland-Mapleville has been unjustly enriched by the presence of the remaining Hydrants at issue. Oakland-Mapleville is therefore liable for assessment concerning these Hydrants. Additionally, genuine issues of material fact remain as to the reasonableness of the Assessments. By imposing assessments on the Hydrants within Lynmar Estates, Harrisville has breached its duties under the Lynmar Estates Agreement. Despite this breach, Oakland-Mapleville has sustained no damages aside from the costs incurred in connection with this litigation, and Oakland-Mapleville is not entitled to reimbursement of the costs of this litigation pursuant to statute or contract. Finally, Oakland-Mapleville has not proved the Assessments to be an illegal tax as a matter of law.

Counsel shall present the appropriate judgment reflecting all of this Court's above rulings for entry.