

Michael K. Jeanes, Clerk of Court
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SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

06/12/2009

LC2007-000559-001 DT

JUDGE DOUGLAS L. RAYES

CLERK OF THE COURT
T. Tankersley
Deputy

HOME BUILDERS ASSOCIATION OF
CENTRAL ARIZONA

CLINT BOLICK

v.

CITY OF MESA (001)

DAVID J OUIMETTE

CARRIE ANN SITREN
GARY L BIRNBAUM
REMAND DESK-LCA-CCC

ORAL ARGUMENT

10:02 a.m. This is the time set for Oral Argument on Plaintiff's Motion for Summary Judgment and Defendant's Cross-Motion for Summary Judgment. Plaintiffs are represented by counsel, Clint Bolick and Carrie Ann Sitren. Defendants are represented by counsel, David J. Ouimette and Gary L. Birnbaum.

Court reporter, Cindy Lineburg, is present also a record of the proceedings is made by audio and/or videotape.

Argument is heard on Plaintiff's Motion for Summary Judgment and Defendant's Cross-Motion for Summary Judgment.

IT IS ORDERED taking these matters under advisement.

10:52 a.m. Hearing concludes.

12-13

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RULING MINUTE ENTRY

This matter was taken under advisement following the oral argument of June 12, 2009 on Plaintiff's Motion for Summary Judgment and Defendant's Cross-Motion for Summary Judgment. The Court has considered Plaintiff's Motion for Summary Judgment, Plaintiff's Statement of Facts in Support of Motion for Summary Judgment, Defendant's Response to Plaintiff's Motion for Summary Judgment and Defendant's Cross-Motion for Summary Judgment, Defendant's Controverting Statement of Facts and Separate Statement of Facts, Plaintiff's Combined Response to Defendant's Motion for Summary Judgment and Reply to Defendant's Response to Plaintiff's Motion for Summary Judgment, Defendant's Reply in Support of Motion for Summary Judgment and the arguments of counsel.

1. Jurisdiction

Plaintiff brought this Special Action challenging the Cultural Impact Facilities Fee imposed by the City of Mesa in June 2007 as part of the development impact fees assessed upon new development.

This Court has jurisdiction over special actions pursuant to the Arizona Constitution Article VI, Section 18 and Rule 4(b), Arizona Rules of Procedure for Special Actions.

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The exercise and acceptance of special action jurisdiction is highly discretionary, Blake v. Schwartz, 202 Ariz. 120, 42 P.3d 6 (App. 2002); Hagg v. Colon, 202 Ariz. 56, 40 P.3d 1249 (App. 2002) and therefore, the decision to accept jurisdiction encompasses a variety of determinants State v. Jones ex rel. County of Maricopa, 198 Ariz. 18, 6 P.3d 323 (App. 2000). Acceptance of special action jurisdiction is appropriate where an issue is one of first impression regarding a purely legal question, is of statewide importance, and is likely to arise again. In this matter, special action jurisdiction will be exercised to resolve a purely legal question of whether Defendant, City of Mesa, imposed development fees outside the authority granted to municipalities by ARS §9-463.05.

2. Factual and Procedural Background

In May 2007 economic consultant Duncan Associates prepared an Impact Fee Study for the City of Mesa. That study ("Impact Fee Study") analyzed the cost of the cultural facilities provided by the City of Mesa. The Impact Fee Study explained that the Cultural Facilities Fee represents a projection of the pro-rata per-unit share of the cost of construction of new or expanded cultural facilities which will be needed in order to maintain the current level of service facilities provided by the City of Mesa. The Impact Fee Study determined the historical cost of construction of existing facilities and divided that by the existing number of dwelling units in Mesa in 2006, determining that the per unit cost to provide the current level of service would be \$221 per single-family residence. The Impact Fee Study then projected that the cost of construction of additional or expanded facilities, which will be needed to maintain a comparable level of service for the new development population will be approximately the same, i.e. \$221.

In June 2007 the Mesa City Council passed Ordinance No. 4706, amending pre-existing development impact fee ordinances. The result of No. 4706 was to increase the aggregate impact fee from \$5,233 to \$8,321 but decrease the Cultural Facilities Fee from \$237 to \$218 per residence.

Plaintiff brings this Special Action challenging the Cultural Facilities Fee provided in No. 4706 as violating ARS §9-463.05. Plaintiff contends that cultural facilities are not "necessary public services to a development..." and that the Cultural Facilities Fee does not provide "benefit" to a particular development.

3. Ruling

A. Mesa's Authority to Enact Cultural Facilities Fees

Plaintiff argues that the portion of Ordinance No. 4706 that imposes a fee for cultural facilities is inappropriate because it conflicts with ARS §9-463.05(A) which allows a city to

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impose development fees for "necessary public services to a development." Plaintiff argues that although cultural facilities are "desirable, valuable, worthwhile, important" they are not "necessary". Plaintiff argues that once the Court determines that cultural facilities are not necessary the usual deference to the City's decision is inappropriate citing Home Builders Association of Central Arizona v. City of Apache Junction, 198 Ariz. 493, 11 P.3d 1032 (App. 2000). That case, however, is distinguishable from the circumstances of this case. In Apache Junction the City enacted an ordinance to raise funds associated with new school construction. It was conceded that the legal responsibility for financing Arizona's public schools rests with the legislature and school districts, not with municipalities. Because cities have no authority or responsibility for public school matters, the Court held that funding of public schools was not a "necessary public service" provided by municipalities.

Here, unlike the City in Apache Junction, Defendant is imposing a fee for a service it does provide. ARS §9-463.05 does not specify which public services are "necessary", leaving that decision to the City's elected representatives. The question for the Court is not whether the Court agrees with the decision of the elected City Council that cultural facilities are necessary but whether the imposition of such a fee is arbitrary or lacks a rational relation to legitimate municipal interest.

The Mesa City Council made legislative findings, after study, open discussion and proceedings, that museums and cultural facilities provide necessary public services. Those findings are presumed valid. Plaintiff has not demonstrated that the City Council's determinations were arbitrary. Plaintiff conceded at page 4 of its Motion for Summary Judgment that it "is not questioning the wisdom of its [the City's] decision."

The Court finds that Plaintiff has failed to show that Defendant's imposition of a Cultural Impact Facilities Fee is arbitrary or that it lacks a rational relation to legitimate municipal interest.

B. Providing Public Services to a Development

ARS §9-463.05 requires that an impact fee result in a benefit to the developer. The fee needs to be factually related to the need for public services created by the development and must bear a reasonable relationship to the public burden created by the development. Home Builders Association of Central Arizona v. City of Scottsdale, 187 Ariz. 479, 930 P.2d 993 (1997) ("Scottsdale III").

Here Defendant's need for expanded cultural facilities is created by the expanding population brought on by new development. The idea that there must be a direct benefit resting

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on concrete plans showing the location type and character of improvements was expressly rejected by the Court in Scottsdale III.

The Impact Fee Study calculated the projected per-unit cost to provide additional or expanded facilities needed to maintain a comparable level of services for the new development population. The nature and extent of the impact fee was calculated by the City Council to bear a reasonable relationship to that portion of the public burden created by the development. The City Council's decision, based on the Impact Fee Study, was supported by substantial evidence, was not arbitrary, capricious or an abuse of discretion.

IT IS ORDERED accepting Special Action Jurisdiction.

IT IS FURTHER ORDERED denying Plaintiff's requested relief.