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DISTRICT II

August 18, 2021

To:

Hon. Teresa S. Basiliere
Circuit Court Judge
Electronic Notice

Paul E. Alexy
Electronic Notice

Melissa M. Pingel
Clerk of Circuit Court
Winnebago County
Electronic Notice

Remzy D. Bitar
Electronic Notice

Heath G. Mynsberge
Electronic Notice

You are hereby notified that the Court has entered the following opinion and order:

2020AP1292

Garrow Properties, LLC v. Town Sanitary District #3 of the Town of Winneconne (L.C. #2019CV202)

Before Gundrum, P.J., Neubauer and Reilly, JJ.

Summary disposition orders may not be cited in any court of this state as precedent or authority, except for the limited purposes specified in WIS. STAT. RULE 809.23(3).

Garrow Properties, LLC (Garrow) appeals from a judgment dismissing Garrow's claims against Town Sanitary District #3 of the Town of Winneconne (the District). Garrow challenges the circuit court's decision granting the District's motion for summary judgment on the ground that genuine issues of material fact exist as to whether the District's sewer connection fee (WIS. STAT. § 66.0821(4)(a) (2019-20)¹) bears a "[r]easonable relationship" (WIS. STAT.

¹ All references to the Wisconsin Statutes are to the 2019-20 version.

§ 66.0628(1)(b), (2)) to the cost charged by the District.² Based upon our review of the briefs and record, we conclude at conference that this case is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21. We affirm.³

The District is a special purpose municipal corporation organized under WIS. STAT. § 60.77(2).⁴ On December 22, 1995, the District entered into an inter-governmental agreement with the Village of Winneconne (the Village) entitled “Wastewater Treatment Agreement Between the Village of Winneconne and Sanitary District #3” (the Wastewater Agreement). This agreement allowed wastewater collected from properties located within the District to be transmitted to the Village’s wastewater treatment facility for processing.

As part of the Wastewater Agreement, the District was required to pay capital contributions in excess of \$1 million and compensate the Village approximately \$500,000 in additional costs for designing, financing, and constructing a portion of the Village’s treatment plant that would be used to provide service to the District. The District also incurred \$2 million for the design and construction of the sanitary sewer infrastructure located within the District so as to collect and transmit wastewater to the Village. Operational and maintenance costs continue to this day. In 1998, the District adopted a “Final Assessment Resolution in Accordance with Section 66.60, Wisconsin Statutes, Authorizing Installation of Sanitary Sewerage System in

² Garrow also raises three additional issues, however, resolution of the reasonableness of the sewer connection fee resolves these remaining claims.

³ We deny the District’s motion to strike, which we held in abeyance. Garrow’s reply brief is appropriately responsive to the District’s brief and does not raise arguments for the first time in its reply.

⁴ WISCONSIN STAT. § 60.77(2) provides in relevant part that a town sanitary district “is a body corporate with the powers of a municipal corporation for the purposes of carrying out this subchapter. The district may sue and be sued and may enter into contracts.”

Winneconne Sanitary District No. 3 and Levying a Special Assessment Therefor” (the Special Assessment). The Special Assessment stated that each existing dwelling within the District would be charged \$9,500 as a sewer connection fee.

The Special Assessment also contained “Vacant Lots and Future Connections” provisions which reads as follows:

Property owners of vacant lots may have a service lateral installed as part of the initial project at a cost of \$1,500. The lateral will be constructed from the sewer main to the property line. When the lot is developed in the future, the \$1,500 would be deducted from the connection charge.

Future connection fees are estimated to increase \$300 per year from the initial \$9,500. Future connection fees must be made in a single payment. The property owner will also be responsible for the cost of the lateral construction from the sewer main to the house, including roadway replacement, if a lateral was not installed as part of the original project.

The District reviewed the sewer connection fee each year to comply with WIS. STAT. § 66.0628(2)’s “[r]easonable relationship” requirement. In 2009, the current rate of \$14,800 was set. The District initially operated on the assumption that there would be 270 connections to the sewer main. As of April 2018, the District had 264 connections and incurred operating losses of \$49,572 in 2016 and \$53,595 in 2017.

In 2005, Garrow purchased numerous parcels of vacant property in the District. Per the ordinance, Garrow was responsible for connecting to the sewer system by installing a lateral line from the main sewer line to each of the vacant lots and paying the sewer connection fee of \$14,800 per lot.

Garrow asserts that the District's connection fee has no reasonable relationship to the District's costs. The District moved for summary judgment on the ground that no genuine issue of material fact exists that its sewer connection fee does not bear a reasonable relationship to the sewer service provided by the District. The circuit court agreed with and granted summary judgment to the District.

“Whether the circuit court properly granted summary judgment is a question of law that this court reviews de novo.” *Racine County v. Oracular Milwaukee, Inc.*, 2010 WI 25, ¶24, 323 Wis. 2d 682, 781 N.W.2d 88 (citation omitted). Summary judgment shall be granted “if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits ... show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.” WIS. STAT. § 802.08(2).

WISCONSIN STAT. § 66.0821(4)(a) provides in relevant part that the governing body of a municipality may establish sewer connection fees “in an amount to meet all or part of the requirements for the construction, reconstruction, improvement, extension, operation, maintenance, repair, and depreciation of the sewerage system.” WISCONSIN STAT. § 66.0628(2) requires that the sewer connection fee, under § 66.0821(4)(a), “bear a reasonable relationship to the service for which the fee is imposed.”⁵ Garrow has failed to produce a genuine issue of material fact that a reasonable relationship does not exist between the \$14,800 sewer connection fee and the District's costs in providing sewer service to its residents.

⁵ A “[r]easonable relationship’ means that the cost charged by a political subdivision for a service provided to a person may not exceed the political subdivision’s reasonable direct costs that are associated with any activity undertaken by the political subdivision that is related to the fee.” WIS. STAT. § 66.0628(1)(b).

The District showed a reasonable relationship between the \$9,500 connection fee and the costs it incurred in building and designing the sewer system and further estimated that this initial connection fee was estimated to increase \$300 per year for any future connection. The District provided proof that it conducts an annual review of the sewer connection fee rate as it relates to the reasonableness of the costs the District incurs: “It doesn’t mean they change [the rate] every year, but the board does examine the connection charge each year to determine whether it should be changed” As of April 2018, the District had incurred operating losses in 2016 and 2017 and had not reached the 270 connections it assumed in its initial financing plan. Garrow’s dissatisfaction with the current \$14,800 sewer connection fee does not overcome the proof provided to the circuit court by the District that its sewer connection fee bears a reasonable relationship to the District’s cost in operating and maintaining the District’s sewer system.

IT IS ORDERED that the judgment of the circuit court is summarily affirmed pursuant to WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that this summary disposition order will not be published.

Sheila T. Reiff
Clerk of Court of Appeals