

State Utgr v. Lime Rock Fire Dist.

Superior Court of Rhode Island, Providence

August 4, 2023, Filed

C.A. No. PC-2022-02014

Reporter

2023 R.I. Super. LEXIS 68 *

STATE OF RHODE ISLAND UTGR, Inc. v. LIME ROCK FIRE DISTRICT, by and through Albert Ledoux, in his official capacity as the Lime Rock Fire Marshal; and OFFICE OF THE STATE FIRE MARSHAL

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Opinion

[*1] DECISION

MCHUGH, J. Before this Court for decision is *UTGR, Inc. v. Lime Rock Fire District* by and through Albert Ledoux, in his official capacity as the Lime Rock Fire Marshal, and Office of the State Fire Marshal, C.A. No. PC-2022-02014. Plaintiff, UTGR Inc., (Plaintiff or UTGR) filed a Petition for Declaratory Judgment that Defendant, Lime Rock Fire District (Defendant LRFD), was not authorized to collect a fire plan review fee because it was not collected in accord with the formula provided in G.L. 1956 § 23-28.2-26, as specifically set forth in the Rhode Island Fire Code at 450 RICR 000-00-7.1.14.3.4, and the Town of Lincoln's Ordinance at Part II, Article I, § 117-2(A), and/or (3) constituted the imposition an illegal tax as the fee collected is not directly related to the total reasonable and actual cost incurred by the Lime Rock Fire District for the reviewing UTGR's application for fire plan review.

This Court has jurisdiction pursuant to G.L. 1956 §§ 8-2-13, 8-2-14, and G.L. 1956 § 9-30-1.

I

FACTS AND TRAVEL

Plaintiff owns the property located at 100 Twin River

Road in Lincoln, Rhode

Island (Tax Assessor's Plat 42, Lot 24). (Pet. for Decl. J. ¶ 1) Defendant Office of the State Fire Marshal (Defendant or OSFM) is a state agency, within the Rhode Island Department of Business Regulation, as provided [*2] in § 23-28.2-1. *Id.* ¶ 3. Defendant LRFD is an independent fire district established pursuant to an Act of the General Assembly. See An Act to Incorporate the Lime Rock Fire District in the Town of Lincoln, H.832, January Session 1948, approved April 22, 1948. *Id.* ¶¶ 2, 13. Since 1948, the Lime Rock Incorporation Act has been amended.¹

On September 23, 2021, UTGR submitted to Defendant LRFD plans and information regarding a fire plan review of UTGR's proposed 60,920 square foot expansion of the premises at the property. *Id.* ¶ 7. The estimated total value of the project was \$50,500,000. *Id.* On September 28, 2021, LRFD Fire Marshal Albert Ledoux notified the Project Manager that the plans were reviewed and that the fee was \$203,033. *Id.* ¶ 8. Marshal Ledoux indicated that the fire plan review fee was calculated based upon the cost of construction, here, the amount of \$50,500,000. *Id.* ¶ 7.

Plaintiff informed LRFD that it disagreed with the amount calculated for the fire plan review fee and that it would accept a fee based upon the Town of Lincoln's ordinance concerning calculation of cost of construction for purposes of a building permit fee. *Id.*

¶¶ 27-28. LRFD declined to reduce the fee amount and UTGR paid the \$203,033 fee,

¹ See 1982 Local Acts page 153; 1984 Local Act No. 84; 1989 Local Act No. 41; 1990 Local Act No. 38; 1994 Local Act No. 21; 1995 Local Act No. 9; 1996 Local Act No. 5; 2006 Local Act No. 9; and 2009 Public Laws Chapters 32 & 43.

2

reserving the right to appeal or challenge the [*3] calculation and assessment to avoid delaying the

completion of the Project. *Id.*

UTGR filed an appeal with the Fire Safety Code Board of Appeal and Review (Fire

Board) on January 13, 2022, arguing that LRFD's calculation and assessment of the fire plan review fee was erroneous and requesting that the Fire Board reduce the fee to \$43,477.01 and order LRFD to issue a refund to UTGR of \$159,555.99. (Pet. for Decl. J. ¶ 28.) After holding a hearing, on March 9, 2022 the Fire Board issued a decision denying

Plaintiff's request to reduce the plan review fee. See Decision of Fire Board May, 5, 2022. The Fire Board found that:

(1) Defendant LRFD is an independent fire district and not a department within or under the control of the Town of Lincoln;

(2) UTGR, through its Project Manager, submitted plans for review, citing a construction cost of \$50,500,000 which resulted in a \$203,000 plan review fee;

(3) The Board rejected the Applicant's argument that Town of Lincoln Municipal

Ordinance Chapter 117. Fees, Article I. Building Permits, § 117-1. Fees for building permits and/or § 117-2. The new structure is controlling as it relates to the LFD plan review fees determination;

(4) The municipal ordinance applicable [*4] is the LRFD Rules and Regulations titled Plan Review Submittals;

(5) The Town building official's determination of cost of construction for purposes of determining a building permit fee is separate and distinct from the fire district official's determination of cost of construction for purposes of determining a fire plan review fee;

3

(6) While using the building official's determination for cost of construction is one method that a fire district official may rely on, it is not the only method;

(7) LRFD's use of the value for cost of construction submitted by UTGR to determine the plan review fee was both reasonable and justified. *Id.* at 3.

The Fire Board denied UTGR's request to reduce the LRRFD plan review fee to \$43,477.01. *Id.* at 4.

Thereafter, Plaintiff appealed the Fire Board's Decision

to the Rhode Island District

Court, Sixth District, pursuant to § 23-28.3-6. Plaintiff also filed a petition with this Court on April 7, 2022, seeking:

(a) A declaration that, absent an ordinance enacted by the Town of Lincoln, Defendant LRFD lacked the authority to collect any fire plan review fee from UTGR;

(b) A declaration that Defendant LRFD has no authority to enact an ordinance to collect fees for the fire [*5] plan review services it provides;

(c) If it is determined that LRFD has authority to assess fire plan review fees, a declaration that such fees must be calculated based upon "cost of construction" determined in accordance with Town of Lincoln Code of Ordinances Part II, General Legislation, Chapter 117. Fees, Article I. Building Permits, § 117-2(A) (the Lincoln Ordinance)2;

2Town of Lincoln Code of Ordinances at Part H. General Legislation, Chapter 117. Fees, Article I. Building Permits, § 117-2(A) (the Lincoln Ordinance) provides as follows:

A. New structures and additions, both commercial and residential:

(I) Fees will be based on the International Building Code's square foot construction cost, February

2014 version with footnotes. All square foot numbers will be rounded down to the whole number.

4

(d) A declaration that the \$203,033 fire plan review fee assessed by Defendant LRFD equates to an illegal tax because it is not directly related to the total reasonable and actual costs incurred for conducting the fire plan review for the Project;

(e) A declaration of the amount that is related to the total reasonable and actual cost incurred by Defendant LRFD for conducting the fire plan review [*6] for the Project;

(f) An award of reasonable attorneys' fees and costs; and

(g) Such other relief as this Court deems fair and appropriate. See Pet. for Decl. J.

On May 2, 2022, Defendant LRFD filed its Answer to the Petition with LRFD's responses to the averments and

affirmative defenses. (Def. LRFD's Answer to Compl. for Declaratory J.)

Likewise, on May 2, 2022, Defendant OSFM filed its Answer to the Petition including the OSFM's responses and prayer that this Court enter judgment as follows:

(a) A declaration that Defendant LRFD is authorized to assess and collect fire plan review fees in accordance with § 23-28.2-26 and Regulation 450-RICR-00-00-7.1.14.3.4;

(b) A declaration regarding whether in assessing fire plan review fees under § 23-28.2-26, Defendant LRFD is required to determine "cost of construction" as provided in the Lincoln Ordinance;

(c) A declaration regarding whether Defendant LRFD is required to refund any portion of the \$203,033 fire plan review fee paid by Plaintiff UTGR; and

(d) Such other relief as this Court deems just and proper. (Answer of Def. OSFM.)

(2) The square foot cost will be adjusted every two years as published by the ICC.

5

II

STANDARD OF REVIEW

The Uniform Declaratory Judgments Act (UDJA) gives the Superior Court the [*7]

"power to declare rights, status, and other legal relations whether or not further relief is or

could be claimed." *N & M Properties, LLC v. Town of West Warwick ex rel. Moore*, 964

A.2d 1141, 1144 (R.I. 2009) (quoting § 9-30-1). To state a claim for declaratory judgment,

the Superior Court must be presented with an actual justiciable controversy. *Id.* (citing

Bowen v. Mollis, 945 A.2d 314, 317 (R.I. 2008)).

The Declaratory Judgments Act, § 9-30-1, provides:

"The superior or family court upon petition, following such procedure as the court by general or special rules may prescribe, shall have power to declare rights, status, and other legal relations whether or not further

relief is or could be claimed. No action or proceeding shall be open to objection on the ground that a declaratory judgment or decree is prayed for. The declaration may be either affirmative or negative in form and effect; and such declarations shall have the force and effect of a final judgment or decree."

"This power is broadly construed, to allow the trial justice to 'facilitate the

termination of controversies." *Bradford Associates v. Rhode Island Division of*

Purchases, 772 A.2d 485, 489 (R.I. 2001) (quoting *Capital Properties, Inc. v. State*, 749

A.2d 1069, 1080 (R.I. 1999)). The Rhode Island Supreme Court has held that "persons

whose rights are affected [*8] by an ordinance . . . are entitled to bring a declaratory judgment

suit despite the possibility that administrative remedies might be available." *Taylor v.*

Marshall, 119 R.I. 171, 180, 376 A.2d 712, 717 (1977). See also Super. R. Civ. P. 57

(stating "[t]he existence of another adequate remedy does not preclude a judgment for

declaratory relief in cases where it is appropriate"). Thus, "the Superior Court has

6

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 legal relations thereunder." (Emphasis added.)

"This statute gives a broad grant of jurisdiction to the Superior Court to determine

the rights of any person that may arise under a[n ordinance] not in its appellate capacity

but as part of its original [*9] jurisdiction." *Canario*, 752 A.2d at 479 (citing *Roch v.*

Garrahy, 419 A.2d 827, 830 (R.I. 1980)). Further, this Court acknowledges that the

purpose of the UDJA is "to allow the trial justice to 'facilitate the termination of

controversies.'" *Bradford Associates*, 772 at 489.

III

ANALYSIS

Under the UDJA, the Superior Court can "declare rights, status, and other legal

relations whether or not further relief is or could be claimed." Section 9-30-1; *Canario*,

752 A.2d at 479. *See also Rhode Island Orthopedic Society v. Blue Cross & Blue Shield*

of Rhode Island, 748 A.2d 1287, 1289 (R.I. 2000).

This Court grants the request for declaratory relief, finding that pursuant to Rhode

Island Fire Code Regulations § 1.14.3.4, LRFD is authorized to collect fire plan review

fees, provided such fees do not exceed the amounts set forth in § 23-28.2-26. This Court

7

further declares that Defendant LRFD can determine "cost of construction" as provided in

the Lincoln ordinance or can determine "cost of construction" based upon project

information available to LRFD, including information provided by an applicant requesting

plan review.

In accordance with § 23-28.2-26, Albert Ledoux of the Lime Rock Fire District was

a duly appointed and certified Assistant Deputy State Fire Marshal authorized to review fire

plans and collect fees. Assistant Deputy Ledoux conducted the fire plan review with respect

to UTGR's project. While Plaintiff urges that the statute [*10] authorizes the State Fire Marshal's

Office to collect fire plan review fees, Assistant Deputy Ledoux is duly certified and

appointed to enforce the Fire Safety Code and conduct fire plan reviews. In relevant part,

Rhode Island Fire Code Regulations § 1.14.3.4, and Rhode Island General Laws § 23-28.3-

3 provides as follows:

"Plan review fees, not exceeding the amounts listed in §§

1.14.3.2 and 1.14.3.3, may be collected by the Assistant Deputy Fire Marshals of the municipal fire departments and/or fire districts, pursuant to municipal ordinance, only upon their completion of the plan review process. All such fees shall be utilized exclusively for supporting the operations of the municipal fire prevention bureau. Nothing herein shall preclude an AHJ, performing an inspection, pursuant to either Rhode Island Life Safety Code (RILSC) §§ 24.6.3.1.3.1 or 25.2.2.3.1, from being paid at the time of that inspection."

Section 1.14.3.4 also establishes maximum plan review fees that a district may

collect. The maximum fees for fire districts are the fire plan review fees established for the

State Fire Marshal's Office in Rhode Island General Laws § 23-28.2-26, which provides:

§ 23-28.2-26. Plan review fees.

(a) Every request for plan review, by the state fire marshal's office, under the provisions of the Fire Safety Code shall be accompanied by the fee prescribed in this section. Plan review [*11] fees shall be as follows:

8

NEW BUILDING, ADDITIONS, ALTERATION, STRUCTURES, ETC.

General permit fees based on cost of construction

\$500 or less
 \$25.00 Over \$500 but not over
 \$1,000..... \$35.00 Over \$1,000
 but not over \$2,000..... \$45.00
 Over \$2,000 but not over
 \$500,000..... \$45.00+ (plus \$6.00
 per \$1,000 or fraction thereof over \$2,000)

Over \$500,000.....
 \$3,033.00+ (plus \$4.00 per \$1,000 or fraction thereof
 over \$500,000)

(b) All fees collected pursuant to this section shall be
 deposited as general revenue.

As such, Assistant Deputy Ledoux was authorized to
 conduct the fire plan review

of Plaintiff's project and collect the corresponding fire
 plan review fee pursuant to Fire

Code Regulations § 1.14.3.4 in an amount not
 exceeding the amount prescribed by § 23-

28.2-26.

Next, UTGR contends that if LRFD has authority to
 collect plan review fees, the

fees must be calculated in accordance with the Lincoln
 Ordinance and not the LRFD FPR

Regulation. (Pl.'s Mem. at 10-11.) As support for this
 assertion, Plaintiff relies on the

language in Fire Code Regulation § 1.14.3.4 that fire
 plan review fees "may be collected

by the Assistant Deputy Fire Marshals of the [*12]
 municipal fire departments and/or fire

districts, pursuant to municipal ordinance." *Id.*
 Nevertheless, LRFD is an independent

municipal entity, that is separate from the Town of
 Lincoln. *See Flynn v. King*, 433 A.2d

172, 175 (R.I. 1981) ("fire districts are also public or
 quasi-public corporations"). As such,

when determining the "cost of construction," LRFD is not
 obligated to follow the Lincoln

town ordinance because it is an independent quasi-

municipal entity. *See id.*

Moreover, this Court must give deference to the Fire
 Board's decision that "the

municipal ordinance applicable in this matter is the
 LRFD Rules and Regulations titled

Plan Review Submittals." *See* Decision of Fire Board at
 3, May 5, 2022; *Labor Ready*

9

Northeast, Inc. v. McConaghy, 849 A.2d 340, 345 (R.I.
 2004) (citing *Pawtucket Power Associates Limited
 Partnership v. City of Pawtucket*, 622 A.2d 452, 456-57
 (R.I. 1993)). As such, the regulation LRFD adopted was
 properly applied, giving deference to the Fire

Board's determination. *Id.*

Next, UTGR contends that LRFD's use of UTGR's
 submitted value as "cost of construction" for purposes of
 calculating the fire plan review fee was inappropriate.
 (Pl.'s

Mem. at 11-12.) Plaintiff has not provided information to
 suggest the cost of construction it provided was
 incorrect, rather that LRFD should apply the Town
 Ordinance with respect to cost of construction, [*13]
 which would lower the project and resulting fire plan
 review fee.

See Pl.'s Mem. at 11. The Fire Board concluded that
 LRFD's use of the cost of construction figured submitted
 by UTGR was "reasonable and justified." (Fire Board
 Decision at 3, May 5, 2022.) As such, LRFD's reliance
 of UTGR's assessment of construction costs for this
 project was appropriate. *Id.*

It is well-settled that Defendant LRFD is an independent
 quasi-municipal entity and is not bound by the Lincoln
 town ordinance. *Flynn*, 433 A.2d at 175. As such,
 Defendant

LRFD can determine "cost of construction" as provided
 in the Lincoln ordinance or can determine "cost of
 construction" based upon project information available
 to LRFD, including information provided by the applicant
 requesting plan review. *Id.*

10

IV

CONCLUSION

For the above reasons, this Court grants the request for declaratory relief, finding that pursuant to Rhode Island Fire Code Regulations § 1.14.3.4, LRFD is authorized to collect fire plan review fees, provided such fees do not exceed the amounts set forth in § 23-28.2-26. This Court further declares that Defendant LRFD can determine "cost of construction" as provided in the Lincoln ordinance or can determine "cost of construction" based upon project information available [*14] to LRFD, including information provided by the applicant requesting plan review. Counsel shall prepare and submit an order consistent with this Decision.

11

RHODE ISLAND SUPERIOR COURT***Decision Addendum Sheet*****TITLE OF CASE:UTGR, Inc. v. Lime Rock Fire District, by and****through Albert Ledoux, in his official capacity as****the Lime Rock Fire Marshal; and OFFICE OF****THE STATE FIRE MARSHAL****CASE NO:PC-2022-02014****COURT:Providence County Superior Court****DATE DECISION FILED:August 4, 2023****JUSTICE/MAGISTRATE:McHugh, J.****ATTORNEYS:****For Plaintiff:William M. Russo, Esq.****For Defendant:Louis DeSimone, Jr., Esq.; Ania M. Zielinski,****Esq.**

12