

File # _____
WASHINGTON COUNTY
DISTRICT COURT
NOV - 8 2016
COURT ADMINISTRATOR
By _____ Deputy

FILED

FILED

STATE OF MINNESOTA
COUNTY OF WASHINGTON

DISTRICT COURT
TENTH JUDICIAL DISTRICT

**Martin M. Harstad; Harstad Hills, Inc.,
a Minnesota corporation; and Creative
Capital Holdings, LP, a Minnesota limited
partnership,**

Plaintiffs-Petitioners,

ORDER

File No. 82-CV-16-115

vs.

**City of Woodbury, a Minnesota municipal
corporation,**

Defendant-Respondent.

The above-entitled case came before the undersigned, the Honorable Richard C. Ilkka, Judge of the above-named Court, at the Washington County Courthouse, Stillwater, Minnesota, on October 28, 2016.

Rob A. Stefonowicz, Esq., appeared on behalf of Plaintiffs. George C. Hoff, Esq., appeared on behalf of Defendant.

Based upon the entire file, records and proceedings herein, the Court makes the following:

ORDER

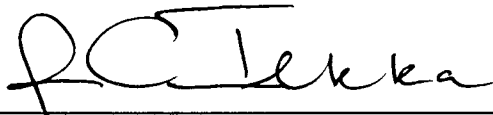
1. Plaintiffs' motion for reconsideration of the September 21, 2016 Order is granted. The portions of the September 21, 2016 Order granting Defendant's motion for summary judgment with respect to the legality of the Major Roadway Assessment Fee and dismissing Counts V – X of the Complaint are vacated.

2. Plaintiffs' motion for summary judgment with respect to the legality of the Major Roadway Assessment Fee is granted. The Major Roadway Assessment Fee is unlawful and unenforceable.

3. The attached Memorandum is made a part hereof by reference.

4. The Washington County Court Administrator shall transmit notice of filing of this order and a copy of this order by the designated e-filing and e-service system, e-mail, or mail to every party affected thereby or upon such party's attorney of record, whether or not such party has appeared in the action, at the party or attorney's last known mail or e-mail address. Such transmittal shall constitute due and proper notice of the Order for all purposes.

LET JUDGMENT BE ENTERED ACCORDINGLY.

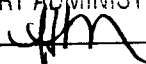
Dated: November 8, 2016 
Richard C. Ilkka
Judge of District Court

JUDGMENT

Pursuant to the Rules of Civil Procedure, I hereby certify that the foregoing Order constitutes the judgment of this court.

Annette Fritz
Court Administrator

Date: 11/9/16 By: 
Deputy Clerk of District Court

File # _____
WASHINGTON COUNTY
DISTRICT COURT
NOV 9 2016
COURT ADMINISTRATOR
By  Deputy

F I L E D **F I L E D**

MEMORANDUM

Re: Harstad v. City of Woodbury
File No. 82-CV-16-115

Plaintiff-Petitioner Martin Harstad is the chief executive officer of Plaintiff-Petitioner Harstad Hills, Inc., and the managing partner of Plaintiff-Petitioner Creative Capital Holdings, LP. All Plaintiffs-Petitioners will be referred to herein collectively as "Harstad". Harstad owns 77 acres of undeveloped land in the City of Woodbury ("Woodbury"). Harstad intends to develop the land into a residential development. Harstad initiated an action against Woodbury, arguing 1) that Woodbury failed to act in a timely manner on his application for the proposed development, resulting in approval of the application under Minn. Stat. §§15.99 and 462.358, and 2) that Woodbury's Major Roadway Assessment ("MRA") is illegal.

This Court, in an Order filed September 21, 2016, found that Harstad's application was incomplete and had not triggered the automatic approval provisions set forth in Minn. Stat. §§15.99 and 462.358. The Court further found that, because the application is incomplete, the issue of the legality of the MRA is not ripe for judicial determination. Harstad, by a letter filed September 29, 2016, requested leave to file a motion for reconsideration of the issue of ripeness of the MRA issue. This request was granted by the Court in an Order filed October 5, 2016. Both parties filed memos addressing the issue of ripeness. The Court has considered these submissions, arguments of counsel, and all memoranda and exhibits submitted previously in support of the original motions for summary judgment.

Woodbury adopted the MRA fee on January 26, 2011, by Resolution No. 11-20. Paragraph III.C.3. of the Council Directive provides "Major roadway costs will be applied

to properties regardless of zoning, size or homestead status. Major roadway improvement cost will normally be collected at the time a property develops per a negotiated major roadway contribution.” Woodbury has divided the city into phases for development. Harstad’s property is in phase 2. Woodbury determined the cost of roadway improvements that would be needed within each phase as that phase was developed, determined the number of developable acres within each phase, and determined the cost per acre for roadway improvements deemed to be necessary due to development. The MRA has been imposed on the other developments within phase 2. A Memorandum from the City of Woodbury, Public Works Department, Engineering Division to Harstad, dated November 13, 2015, states that the proposed MRA for Harstad’s development is \$1,389,444.00. A second Memorandum was issued on December 3, 2015, which modified proposed area charges but left the proposed MRA the same.

An issue is ripe for judicial determination in a declaratory judgment action if a justiciable controversy exists. McCaughtry v. City of Red Wing, 808 N.W. 2d 331, 337 (Minn. 2011). A justiciable controversy exists if the issue “(1) involves definite and concrete assertions of right that emanate from a legal source, (2) involves a genuine conflict in tangible interests between parties with adverse interests, and (3) is capable of specific resolution by judgment rather than presenting hypothetical facts that would form an advisory opinion.” Id., citing Onvoy, Inc. v. ALLETE, Inc., 736 N.W. 2d 611, 617-18 (Minn. 2007). A person whose rights, status or other legal relations are affected by municipal ordinance may bring a declaratory judgment action to determine the validity of the ordinance. Minn. Stat. §555.02. A person must still present a justiciable controversy

in order for the issue raised by the declaratory judgment action to be ripe. This is accomplished by showing a direct and imminent injury which results from the alleged illegal ordinance. Id., citing Kennedy v. Carlson, 544 N.W. 2d 1, 6 (Minn. 1996). The party must show a bona fide legal interest which has been, or is about to be, affected in a prejudicial manner. Id. at 338, citing State ex rel. Smith v. Haveland, 25 N.W. 2d 474, 477 (Minn. 1946). The Court is to keep in mind that declaratory judgment actions are to be used to allow parties to be relieved of uncertainty arising out of a controversy involving their legal rights before those rights have been invaded. Id. at 339. The Court has jurisdiction to declare the rights of parties if the rights are placed in jeopardy by the ripe or ripening seeds of an actual controversy. Id., citing Minneapolis Fed'n of Men Teachers v. Bd. of Educ. of Minneapolis, 56 N.W. 2d 203 205-06 (Minn. 1952).

Harstad's Complaint includes a count alleging a cause of action for declaratory judgment that the MRA is illegal and unenforceable. Woodbury has adopted the MRA and applied it to other developments within the City. Although Harstad's application is incomplete, upon further reflection, the Court determines that the issue is ripe for decision. Woodbury has indicated to Harstad that it intends to propose that the MRA be imposed on Harstad's development. Harstad has shown that there are the ripening seeds of an actual controversy with respect to the legality of the MRA. It is in both parties' interest to be relieved of the uncertainty arising with respect to the legality of the MRA. It is in Harstad's interest to know whether the MRA can be imposed before he decides whether to continue with the application process. Woodbury Ordinance Sec.21-16 states that a proposed subdivision that is premature may not be approved by the city Council. A proposed subdivision may be deemed premature if the streets to serve it are not available,

with “available” meaning that the streets are existing or readily extended and funded (emphasis added). Woodbury Ordinance 21-16(e). Whether the MRA is a legal fee may affect the City’s determination whether the streets are readily extended and adequately funded, and in turn affect whether Harstad’s proposed subdivision is premature. It is therefore in Woodbury’s interest to know at this time whether the MRA is a legal fee. Because a decision on the legality of the MRA would allow both parties to be relieved of the uncertainty arising out of whether the MRA is legal before they make a decision on the proposed subdivision, this Court finds that the controversy is ripe for determination.

Woodbury is a statutory city. As such, its powers are limited to those “expressly conferred by statute or implied as necessary in aid of those powers which have been expressly conferred.” Mangold Midwest Co. v. Village of Richfield, 143 N.W. 2d 813, 820 (Minn. 1966). Harstad argues that the MRA is an impact fee and that it is not authorized under Minnesota law.

A fee imposed by a city is an impact fee if it is “in the form of a predetermined money payment; assessed as a condition to the issuance of a building permit, an occupancy permit or plat approval; pursuant to local government powers to regulate new growth and development and provide for adequate public facilities and services; levied to fund large-scale, off-site public facilities and services necessary to serve new development; in an amount which is proportionate to the need for the public facilities generated by new development.” Country Joe, Inc., v. City of Eagan, 560 N.W. 2d 681, 685 (Minn. 1997).

Woodbury argues that the MRA is merely a proposed fee that starts as a negotiating point between the City and a developer, and that through discussions, the

parties have an opportunity to understand, and perhaps refine, a proposed development's effects on the existing infrastructure and the need for infrastructure improvements. Woodbury has, through Resolution No. 11-20, Paragraph III.C.3, provided that major roadway costs will be applied to properties and has calculated the amount of the fee to be charged per developable acre. There is no showing that a party who refuses to pay the fee would receive approval of its plat. While there may be some room for negotiation as to the amount, the MRA is a predetermined fee that is required for plat approval. Woodbury argues that it implemented the MRA pursuant to local government powers to regulate new growth and development and to provide for adequate public facilities and services. The MRA was established to fund street improvements outside of a development which will be necessary due to the increased traffic demands caused by the development, with each development paying its proportionate share of the cost. All of the elements set forth in Country Joe are met by the MRA. The MRA is an impact fee.

The Court in Country Joe, while defining an impact fee, specifically declined to decide whether an impact fee is authorized under Minnesota law. Country Joe at 686. The Court did, however, specifically hold that while the Municipal Planning Act, Minn. Stat. Ch. 462, provides broad municipal planning authority to a city, financing powers cannot be implied from it. Country Joe at 684. Under Country Joe, Woodbury cannot base its authority to impose the MRA under any implied powers under the Municipal Planning Act. The MRA is illegal unless there is a specific statute authorizing it.

Woodbury argues that it has authority under Minn. Stat. §462.358 to impose the MRA. Subdivision 1a provides that a municipality may adopt subdivision regulations to facilitate adequate provision for transportation. Minn. Stat. §462.358, subd. 1a. As stated

in Country Joe, this provides broad planning authority, but does not provide financing authority. Woodbury argues that Minn. Stat. §462.358, subd. 2a provides financing authority for the MRA. Subdivision 2a provides authority for a city to set the standards and requirements for subdivisions, and allows the city to condition the approval of a subdivision on the construction and installation of streets, or in lieu thereof, on the receipt of funds sufficient to assure that the improvements will be constructed. Minn. Stat. §462.358, subd. 2a. This section applies to the streets to be constructed as part of the subdivision. It does not grant authority to impose fees for construction of new roads or improvements to existing roads outside of the development which may become necessary in the future due to increased traffic resulting from a development. There is no specific statutory authority for the MRA, and as such, the MRA is an illegal fee.

R. C. I.