June 17, 2020

Day Pitney Prevails in Invalidation of Sewer and Water Connection Fee Ordinance

Day Pitney LLP represented Squiretown Properties LLC in its challenge of the 2014 sewer and water connection fee ordinance of the Township of Livingston. As a result of the 2014 ordinances being invalidated, Squiretown's project was subject to the connection fee amounts in effect prior to those ordinances, which were half of the 2014 connection fees. Day Pitney partner Craig Gianetti represented Squiretown in this litigation and was assisted by senior associate Sarah Langstedt, who served as second chair.

In a long, tortured history, this matter relates to Squiretown's successful builder's remedy lawsuit against the Township of Livingston in the Third Round affordable housing cycle. In 2010, Squiretown was awarded a builder's remedy for 220 apartments, with a percentage set aside for affordable housing, which the Appellate Division upheld in 2013.

This lawsuit arose after the Township adopted ordinances in 2014 substantially increasing its water and sewer connection fees, in effect doubling what Squiretown had to pay for the project. Squiretown claimed the public notice for the ordinances was defective; the calculation of the revised connection fees failed to comply with the statutory formula for connection fees; the methodology and manner in which the Township calculated the connection fees were arbitrary, capricious and unreasonable; and the Township acted in bad faith in adopting the increased connection fees shortly after it entered into an memorandum of understanding with Squiretown concerning sewer and water utility improvements.

Following a two-day trial, the court issued a bench decision invalidating the ordinances that increased the connection fees. The court held that the revised sewer and water connection fees did not comply with the statutory formula and were arbitrary, capricious and unreasonable. N.J.S.A. sections 40A:26A-11 and 40A:31-11 require when calculating new connection fees that a single-service unit (or equivalent dwelling unit) be based on "the average daily flow for the average daily single family residence" in the service area. In Livingston's case, no such study of the average single-family residence was performed; rather, the Township's engineer went on the "assumption" that the average single-family residence uses 300 gallons per day.

The court also held that public notice on the ordinances was defective because (1) the original public notice for the ordinances stated that the second reading would occur on Sept. 2, 2014, while the actual date of the second reading was Sept. 22, 2014, and (2) the township council carried the consideration of the ordinances multiple times without announcing a specific new date for a second reading.

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