IN THE FOURTH DISTRICT COURT, HEBER CITY DEPARTMENT
WASATCH COUNTY, STATE OF UTAH

HIGHLANDS AT JORDANELLE, LLC, a Utah limited liability company, Plaintiff, v. WASATCH COUNTY, *et al*, Defendants.	**RULING RE: MONTHLY FEES** Case No. 080500390 Judge Fred D. Howard
MUSTANG DEVELOPMENT, LLC *et al.*, Plaintiffs and Counterdefendants, v. THE WASATCH COUNTY FIRE PROTECTION SPECIAL SERVICE DISTRICT, a special service district of Wasatch County, Defendant and Counterclaimant.	
MUSTANG DEVELOPMENT, LLC *et al.*, Plaintiffs, v. WASATCH COUNTY, a legal subdivision of the State of Utah, Defendant.	

This matter comes before the Court as a result of a two day evidentiary hearing on October 17-18, 2012. Both Defendants, Wasatch County ("The County") and Wasatch County Fire Protection Special Service District ("Fire District"), filed Written Summations on November 19, 2012. Plaintiff ("the Developers") filed a Summation on November 20, 2012. The County and the Fire District then filed Written Rebuttals on December 10, 2012. Finally, the Developers filed a Response on December 11, 2012.

Having reviewed the parties' briefs, being fully advised in the premises, and good cause appearing, the Court now makes the following Ruling:

RULING

On November 10, 2010, this court entered an Order concerning service fees being charged by the County under Wasatch County Resolution 99-3. Resolution 99-3 sought to charge an additional service fee of $14.81 per equivalent residential unit for fire protection services ("Monthly Fees") beginning when a density determination is made by the County. However, the Court held that the Monthly Fees were invalid, and therefore the Developers that paid the Monthly Fees were entitled to a refund.

Following the November Order, the Court issued an order entered on February 23, 2012. That Order granted Plaintiffs' Monthly Fees Motion in part, and granted the Plaintiffs' Counterclaim Motion in part, while deferring any ruling on the remaining issues until after an evidentiary hearing on October 17-18, 2012.

The issue now before the Court, which has resulted from the October hearing, is whether the County should refund all, some, or none of the Monthly Fees that were improperly acquired.

The County[1] argues that "[t]he refunds of monthly fees the Court intends to award the plaintiffs. . .should be reduced for the reasonable value of the augmented fire protection services provided to their properties by the Jordanelle Fire Station."(pg. iv.) The County further asserts that it "seeks such a reduction based on two alternative theories....First, the reduction is warranted based on the Court's November 2010 order and its discretion when fashioning an equitable remedy, which is what a refund is. Second, the reduction is warranted under the County's affirmative defense of setoff under an unjust enrichment theory." (pg. 1)

Interpreting November 2010 Order

While the November 2010 Order did hold that the County's density-determination method to impose fire service charges was improper, it also held that the County nonetheless "is entitled to charge an appropriate service fee for fire protection services" provided by the Jordanelle Fire Station. The County argues that this language warrants a reduction in the refund because it entitles the County to charge an appropriate service fee based on the past services supplied. The Developers argue that this language only allows the County to charge an appropriate service fee in the future, having to first make the fee legal. The Court understands that the language of "is entitled to" can be interpreted both ways. Because of this dual

[1]The County and the Fire District make the same substantive arguments. Where they differ is in the actual amount to be refunded based on value conferred (the Fire District argues for a zero dollar refund). Unless otherwise specified, "the County" includes the Fire District.

interpretation, and because the remedy the Developers seek here (i.e. the refund) is equitable in nature[2], the Court will rely on principles of equity to determine the issue at hand instead of relying solely on the language of the November 2010 Order.

Equitable Relief

In determining whether to grant equitable relief, this Court has broad discretion. "'[A] trial court is accorded considerable latitude and discretion in applying and formulating an equitable remedy,' and will not be overturned unless it abuse[s] its discretion."[3] Specifically, the County asks for a reduction in the refund based on a theory of Unjust Enrichment, which is a theory that this Court likewise has broad discretion in determining how and when to use: because "[u]njust enrichment must remain a flexible and workable doctrine.... we afford broad discretion to the trial court in its application of unjust enrichment law to the facts."[4] Furthermore, to state a claim for unjust enrichment, a plaintiff must allege facts supporting three elements: "(1) a benefit conferred on one person by another; (2) an appreciation or knowledge by the conferee of the benefit; and (3) the acceptance or retention of the benefit under such circumstances as to make it inequitable for the conferee to retain the benefit without payment of its value."[5]

In determining how this Court should apply unjust enrichment law to the facts of this

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[2]*American Tierra Corp. v. City of West Jordan*, 840 P.2d 757, 760 (Utah 1992)

[3]*U.S. Fuel Co. v. Huntington-Cleveland Irrigation Co.*, 2003 UT 49, ¶ 9, 79 P.3d 945

[4]*Rawlings v. Rawlings*, 2010 UT 52, 240 P.3d 754, 761, reh'g denied (Sept. 12, 2010)

[5]*Hess v. Johnston*, 2007 UT App 213, 163 P.3d 747, 754

case, the Court's decision turns on prong 3 above: whether the circumstances in this case would make it inequitable to not award a reduction in the refund of monthly fees.

This Court concludes that the circumstances of this case are not such that it would be inequitable for the Developers to retain the benefit of the provided fire services without payment. The Developers have noted several circumstances that have persuaded the Court on the subject. For example, the offsets the County seeks would result in imposing a service fee upon only the property owners who are Plaintiffs in this case. Allowing the County to collect the invalid fee (in the form of an offset) from only the Plaintiffs in this action would perpetuate the problem the November 2010 Order was meant to eliminate. Also, like all property owners in Wasatch County, the Developers have been assessed property taxes which include a line item for county fire protection. This tax suggests that the Developers have not received "something for nothing."[6] Furthermore, and notably, the County would be using the claim of unjust enrichment as an end run around established law governing the reasonableness of service fees. In other words, if the Court were to find unjust enrichment, then municipal entities could simply charge illegal fees as they wish, knowing that should such fees be deemed illegal, they could nonetheless collect those same fees in equity, thereby sidestepping the very policy reasons prohibiting such fees, and potentially sidestepping statutory requirements regarding such laws.

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[6] *Emergency Physicians Integrated Care v. Salt Lake County*, 2007 UT 72, 167 P.3d 1080, 1086; Also, viewing the property tax as such does not mean that the tax was enough to cover the cost of the services, or that the services were excessive, it simply means that the Developers have paid something, and that it was equal to what other property owners paid, i.e, they did not get "something for nothing" or above and beyond what others in the county received.

This would encourage an inequitable method of taxing citizens. These reasons, in light of the broad discretion granted to this Court in applying equitable relief, convince the Court that it would not be inequitable for the Developers to retain the subject benefit without having to pay the referenced fees.

Quantified Benefit

Notwithstanding the above, for purposes of preserving findings for consideration upon possible review, the Court finds that the County did reasonably quantify the benefit. "The first element of [unjust enrichment] requires the court to measure the benefit conferred on the defendant by the plaintiff."[7] A value has been provided by the Jordanelle Fire Station in the form of augmented fire protection and emergency medical services to the Jordanelle area, where the Developers' property rests. The Court is persuaded that the County has properly quantified this value through the testimony of its damages expert, Mr. Nelson. Mr. Nelson calculated the reasonable value of the services that the Jordanelle Fire Station rendered (i.e. what it cost the station to provide those services) using the cost approach, which this Court views as an acceptable method to assess intangible assets like services.[8]

While this finding does not change the outcome of this Ruling, the Court makes such a

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[7]*Richards v. Brown*, 2009 UT App 315, ¶29, 222 p.3d 69.

[8]This approach also appropriately incorporates what the Court stated in the November 2010 Order as an appropriate fee: to be appropriate, the fee had to "constitute a reasonable charge for the services provided and must be proportionate to the actual demand for services created by the property, which may be based in part on the specific stage of development as well as actual services being provided." (Order at 3-4, ¶ 9).

finding should other reasoned minds disagree with the Court's conclusion not to apply unjust enrichment. In other words, if an appellate court were to find a case for unjust enrichment, then this Court has found the County's quantification of the benefit to be appropriate, as well as the County's calculations regarding the refund to be given as outlined on page 21 of its Summation.

Conclusion

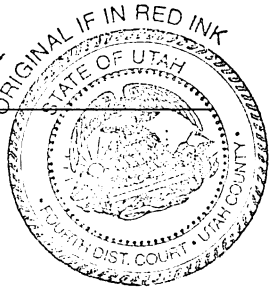
For these reasons, respectfully, the Court grants Plaintiffs' Monthly Fees Motion. The County is hereby ordered to give a full refund of the Monthly Fees, without any reduction. Counsel for the Developers is instructed to prepare an order consistent with this Ruling.

DATED this 1 day of January, 2013.

BY THE COURT:

Hon. Fred D. Howard

District Court Judge



CERTIFICATE OF DELIVERY

I certify that true copies of the foregoing Ruling were mailed, postage prepaid, on the 7 day of January, 2013 to the following at the addresses indicated:

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