IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Irvin H. Peifer and J. Kathleen Peifer,	:	
Appellants	:	No. 1407 C.D. 2009
	:	No. 1408 C.D. 2009
v.	:	Argued: March 16, 2010
	:	
North Codorus Township Sewer Authority	:	
	:	

BEFORE: HONORABLE DAN PELLEGRINI, Judge
HONORABLE P. KEVIN BROBSON, Judge
HONORABLE JAMES R. KELLEY, Senior Judge

OPINION NOT REPORTED

MEMORANDUM OPINION
BY JUDGE BROBSON **FILED:** May 21, 2010

A. INTRODUCTION

In these consolidated appeals, Irvin H. and J. Kathleen Peifer appeal an order of the Court of Common Pleas of York County (trial court) that addressed in consolidated fashion two separate but virtually identical actions, as we will describe below, that the Peifers had initiated with the trial court. The Peifers (hereafter Owners) are the owners of a mobile home park in North Codorus Township (the Township). Owners brought essentially the same challenge in both actions—that the North Codorus Township Sewer Authority's (Authority) decision to decline Owners' request for alternative billing was erroneous. The Authority, as per two rate resolutions, imposed a "Tapping" fee for each mobile home pad in Owners' mobile home park and imposed a flat rate fee of $800 per year ($200

quarterly) for each pad. Owners requested that the Authority permit them to be billed on a metered basis instead of the flat rate fee and also sought a reduction of the Tapping fees. The Authority denied their request, and the trial court confirmed the Authority's decision to deny Owners' requested relief. We affirm the trial court's order.

B. FACTUAL AND PROCEDURAL BACKGROUND

1. The Authority's Tapping and Rate Resolutions and The Application of Those Resolutions to Owners' Property

On October 17, 2005, the Authority adopted two resolutions pursuant to its powers under the Pennsylvania Municipality Authorities Act (MAA).[1] One of the resolutions (hereafter Rate Resolution) related to the annual user charges the Authority established to be imposed upon owners of "improved properties." (Reproduced Record (R.R.) 335a.) That term is defined in part as "any property upon which there is erected a structure intended for continuous or periodic habitation, occupancy or use by human beings or animals, each separate structure from which [sewage or industrial wastes] shall be or may be discharged."

Article II of the Rate Resolution described the method by which the Authority would impose user fees on the owners of improved properties. As the trial court determined, and as the Rate Resolution and the record establishes, the Authority was required to set rates in part based upon regulations of the Pennsylvania Department of Environmental Protection (Department) that require municipal sewer authorities to ensure capacity based upon an estimate that individuals use approximately 100 gallons of water per day.[2] The Authority set a

[1] 53 Pa. C.S. §§ 5601–5623.

unit of measure upon which to base a flat rate fee for improved properties called an "Equivalent Dwelling Unit" or EDU. The EDU is based upon the estimated 100 gallons of water per day a person is likely to use combined with a figure derived from census information that indicates that an average of 2.8 individuals live in a single dwelling unit (100 gallons per day x 2.8 persons equals 280 gallons per day per improved property).

The Rate Resolution includes a chart setting forth a "Computation of Equivalent Dwelling Units." This chart delineates between types of uses and assigns a number of EDUs per unit of measure for each type of improved property. For example, and pertinent to the review in this case, the chart provides that residential dwelling units, regardless of whether they are seasonal, year-round, individual or multi-family, are designated as discrete units of measure and are assigned a measure of one EDU each. The chart places mobile home parks in a separate category, but assigns each mobile home pad or lot the same unit of measure as residential dwellings. Hence, each mobile home pad or lot constitutes one EDU for the purpose of rate costs. Under the terms of the Rate Resolution, the user charge for each EDU (each residential dwelling and each mobile home pad or lot) is a flat rate of $800 per year, which the Authority requires to be paid in equal quarterly amounts of $200. The other resolution imposed a Tapping fee of $1800 per EDU. (R.R. 321a.)

Under the terms of the two resolutions, any residential dwelling unit, whether it is a single-family home or an apartment, and any mobile home pad would be subject to the annual user charge and the one-time Tapping fee.

[2] The obvious significance of the amount of the water used in determining an estimate of sewage flow is that the amounts are typically nearly identical, *i.e.*, water flowing in is a close approximation of sewage flowing out.

Consequently, each mobile home park pad on Owners' property was subject to the $1,800 Tapping fee and the annual user charge of $800.

Additionally, and pertinent to this appeal, Section 2.03 of the Rate Resolution provides as follows:

> The User Charge applicable to any Improved Property shall be calculated, imposed and collected according to a flat rate or EDU basis as determined and applied by the Authority …
>
> *User Charges for any Improved Property, in the sole discretion of the Authority, may be determined on a metered rate basis calculated according to actual metered*, permitted or estimated volume of wastewater discharged by the Improved Property into the Sewer System. In such case, the number of Equivalent Dwelling Units shall be the average daily wastewater discharged during the three consecutive months with the highest wastewater flow by such Improved Property divided by two hundred eighty (280) gallons per day (gpd).

(R.R. 343a (emphasis added).)

The Authority held a regular meeting on December 18, 2006. The minutes from that meeting indicate that Owners "approached" the Authority regarding the fees to be imposed under the resolutions.[3] (R.R. 27a.) At the meeting, Owners stated that, based upon metered readings, the average daily water use of its residents was between eighty and 110 gallons of water, an amount less than one-half of the 280 gallons per day calculated for each EDU under the Rate Resolution. Owners suggested that, because of their lower consumption and use of

[3] The minutes indicate that, at the time of the meeting, the mobile home park consisted of 119 existing spaces and twenty-one "additional reserved EDUs."

water, the flat rate did not reflect a fair measure of their actual use of the sewer system.

David Boyer, the Authority's Chairman, stated that a bond issued to pay for the sewer system was based upon the inclusion of each mobile home in the Owners' mobile home park, and that permitting Owners to use a metered method would open the door to others who would also like to have metered billing. (R.R. 28-9a.) Mr. Boyer indicated that, if that were to happen, the financial status of the bond could be jeopardized. *Id*. According to the minutes, the Authority could not tell at that time what the capacity of the system is, and the Authority adopted the Tapping fee resolution as a means to reduce the amount of money borrowed on the bond. (R.R. 28a.) The minutes reflect that Owners sought to emphasize the fact that they have elected to maintain their own sewage lines, and that, because of that fact, the Authority saved approximately $400,000 that it would have had to pay if it had installed its own sewer lines within the mobile home park. (R.R. 29a.) All members of the Authority voted at that time to deny Owners' request. *Id*.

On January 17, 2007, Owners filed a petition for review with the trial court, challenging the Authority's December 18, 2006 decision denying Owners' request. The court of common pleas assigned the docket number 191-Y08 to this petition. In challenging the Authority's denial of that request, Owners alleged that the Authority's imposition of a flat rate that exceeded actual sewage flow instead of billing based on metered or actual flow was unfair and unreasonable. Owners specifically objected to the Authority's "adjudication," claiming that (1) the Authority's decision failed to satisfy the requirements of Section 555 of the Local

Agency Law (LAL),[4] and (2) the decision violated the provisions of Section 2.03 of the Authority's Rate Resolution, which, as noted above, provides that the Authority may permit a rate payer to pay on a metered basis. Finally, Owners asserted that the Rate Resolution violates their constitutional rights by purportedly taking their property without just compensation.

On February 16, 2007, Owners filed a motion for an evidentiary hearing with the trial court, citing a local rule of court, York County Rule of Civil Procedure No. 6019, which provides that, where a local agency has not made a record before issuing a decision, a party may request that the trial court conduct a hearing. That rule also permits a trial court to remand the matter to the local agency to conduct such a hearing. This local rule appears to be consistent with Section 754 of the LAL.[5] On March 27, 2007, the trial court issued an order granting Owners' request and scheduling a hearing. Following the issuance of this order, the parties submitted a stipulation to the trial court on April 16, 2007, withdrawing Owners' request for a hearing and indicating that the parties had agreed to have the Authority conduct a hearing and that, following the hearing, the matter would "be subject to subsequent appeal to the Common Pleas Court if necessary." (R.R. 35a.)

On June 20, 2007, Owners, without having sought to withdraw the initial petition for review, filed a second petition for review, for which the court of common pleas assigned a distinct docket number, 2240-Y08. This second petition for review averred similar facts to the first petition for review, but referred to a second decision of the Authority denying Owners' request. Paragraph 3 of the

[4] 2 Pa. C.S. § 555. This section requires that a decision of a local agency be in writing and contain factual findings and the reasons for the agency's decision.

[5] 2 Pa. C.S. § 754.

second petition for review provided that "[o]n May 21, 2007, the Board of [the Authority], by motion duly made and approved at a public meeting of [the Authority], denied [Owners'] request to be billed for sewer service on the basis of actual flow rather than upon standard estimates of flow as determined by [the Authority] and [Owners'] request to be charged tapping fees based upon actual flow." The second petition for review included copies of transcripts of hearings the Authority held on May 10 and May 21, 2007.

Owners' second petition for review objected to the Authority's May 21 decision, asserting that the Authority failed to issue a written decision with factual findings and conclusions of law. Owners raised the same specific objections it had raised in the first petition for review challenging the Authority's first decision, but this second petition for review added the contention that the decision was not supported by substantial evidence.

The Authority filed an answer to the second petition for review on July 21, 2007.[6] On August 2, 2007, the Authority filed a motion for evidentiary hearing with the trial court, docketed at the number assigned for the second petition for review. The Authority averred that the minutes from the May meetings constituted findings of fact upon which the Authority based its decision. Nevertheless, the Authority requested the trial court to conduct an evidentiary hearing on Owners' petition for review.[7]

On January 17, 2008, the trial court issued an order, docketed at the docket numbers for both the first and second petition for review, that set a

[6] The Authority had mistakenly also filed the same response on July 27, 2007, to Owners' first petition for review, but as noted above, the Authority correctly filed the response to the second petition for review, and noted the mistake in a subsequent pleading.

[7] The motion actually requests a hearing on Owners' "Petition to Remove," but that appears to be a simple typographical error.

scheduling order for trial on the petitions for review, despite the fact that the parties had essentially discontinued the first action in favor of proceeding solely on the second petition for review. Thereafter, the parties continued to file identical pleadings at both docket numbers. The trial court conducted hearings in May 2008, and issued an order dated June 19, 2008, denying Owners' petitions for review. Owners then filed the present appeals.[8]

2. The Trial Court's Approach to the Petitions for Review as Revealed in its Opinion

The trial court's order and accompanying opinion notes at the outset that Owners brought this action under the LAL[9] and that the parties had agreed at a pre-trial conference that the trial court would proceed to consider the matter de novo. The trial court noted that Section 754 of the LAL provides that, when a local agency has failed to make a full and complete record of the proceedings below, the reviewing court may hear the matter de novo.[10] Notwithstanding the fact that Owners' petitions for review specifically arise under the LAL, rather than the MAA, the trial court referred to a trial court's scope of review applicable in matters arising under the MAA, which provides common pleas courts with exclusive jurisdiction over challenges to rate-making decisions of municipal authorities where a rate-payer asserts that the rates an authority has set are not reasonable.[11]

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[8] Owners had also filed an application for injunctive relief pending appeal, but ultimately withdrew that application.

[9] 2 Pa. C.S. §§ 551-555, 751–754.

[10] As noted above, the Authority purported to conduct a "hearing" after Owners filed their first petition for review, but the parties then jointly requested the trial court to conduct a de novo review following the filing of the second petition for review.

[11] 53 Pa. C.S. § 5607(d)(9).

The trial court's factual findings can be summarized as follows. At the time Owners requested relief from the Authority, the Township had recently installed a sewer system operated by the Authority. In establishing the size and capacity of the sewer system, the Authority was bound in part by Department regulations that require systems to base the design of facilities on an estimated use of 100 gallons of water per day per person and corresponding sewer flow. The Authority calculated that the average number of persons per household within the Township was 2.8, and thereby the Authority concluded, that in order to comply with the Department's per gallon per person per day capacity requirement, the system would be required to accommodate a flow rate of 280 gallons per day for each household connected to the system.

The trial court also found facts regarding the Authority's method for financing the Township-wide system. The Authority funded the construction of the system through the issuance of a bond that incurs a debt service of approximately $930,000 per year. In addition to costs related to the debt service, the Authority must pay certain fixed costs and other fluctuating costs. The trial court determined that the total annual cost, including debt service and other fixed and fluctuating costs, was approximately $1.299 million dollars. Approximately $1.08 million of that amount is related to fixed annual costs, unrelated to usage.

The trial court then made determinations regarding the particular fees established in the Tapping fee Resolution and the Rate Resolution, and the trial court found that the resolutions provided for the imposition of the EDU uniformly throughout the Township for every improved residential property.

The trial court also found that users who would be billed on a metered basis would have an incentive to conserve water, and that such conservation

activities would lessen the burden on the Township's system by creating excess capacity that could be sold to other customers. Rate payers who use less would benefit financially. With regard to mobile park residents, the trial court determined that historical data indicates that residents of mobile homes produce less wastewater than the estimated EDU measure of 280 gallons per day per household. Owners' maintenance of their own on-site sewer system, the trial court determined, has resulted in benefits to both the Township and the Owners, because the system uses sewage lines that were already constructed within the mobile home park.

The trial court evaluated the parties' positions and recognized merits of both viewpoints, but it reasoned that, given the necessity of the Authority to ensure the payment of its annual fixed costs as well as any maintenance costs that might arise, neither the Tapping fees nor the annual flat rate user charge were unreasonable or arbitrary. This Court's decision in *Glen Riddle Park, Inc. v. Middletown Township*, 314 A.2d 524 (Pa. Cmwlth. 1974), guided the trial court's reasoning.

Glen Riddle is a decision that arose when a municipality filed a lien against the property owner for unpaid sewer rentals, and the owner sought to challenge the underlying rates. The trial court in that case rejected the owner's claims (1) that the municipality had improperly used sewer rentals as the only method by which to finance the construction costs of the sewer system and (2) that the rates were not reasonable under the MAA. With regard to the owners' argument that the rates established by the municipality were not equitably apportioned, we commented upon our scope of review, noting that courts should not inquire into the wisdom of a discretionary decision, but rather focus only on whether the governmental body rendered a decision in bad faith, with fraud,

capriciously, or in the exercise of an abuse of power. If an authority has not abused its discretion or engaged in an arbitrary exercise of its discretionary powers, a trial court should not disturb the agency's discretionary action. *Glen Riddle*, 314 A.2d at 527.

Ultimately, the trial court in this case, after reviewing several decisions arising under the MAA, rather than the LAL, concluded that the Authority's rates were not arbitrary, did not constitute an abuse of discretion, and were reasonably related to the services provided by the Authority.

C. OWNERS' APPEAL TO THIS COURT

Owners appealed the trial court's decision to this Court, raising the following issues: (1) whether the trial court erred in purportedly not applying a de novo standard of review with regard to the Authority's actions based upon the procedural history of this matter, including the fact that the parties agreed to have the trial court engage in de novo review; (2) whether the trial court erred in concluding that the Authority's rate scheme is reasonable, non-arbitrary, and a proper exercise of the Authority's discretion; (3) whether the trial court erred by concluding that the Authority did not abuse its discretion or engage in a reasonable exercise of its discretion when it rejected Owners' request for metered billing; and (4) whether the trial court's findings and conclusions relating to the Authority's debt service are supported by sufficient evidence in the record.

Before proceeding to address the merits of Owners' appeal, we must first evaluate the nature of Owners' petitions for review to the trial court. We note that both the initial petition for review and the second petition for review sought relief from a local agency's decision under the LAL. At the December 18, 2006 meeting, Owners requested that the Authority exercise its discretion under section

2.03 of the Rate Resolution to bill Owners on a metered basis, rather on an annual flat rate basis or base Owners' rate on a lower EDU basis, *i.e.*, forty-five. (R.R. 28a; "He is requesting consideration to pay for less EDUs or pay for the gallons per day usage.") Although the minutes do not indicate that Owners specifically requested a reduced EDU for the purpose of imposition of the Tapping fee, the Authority regarded the request to encompass Tapping fees, and, a reduction of the EDUs attributed to the Owners' property would also effectuate a change in the Tapping fee charges. In essence, then, we can characterize the petitions for review as vehicles for Owners to challenge the discretionary decision of the Authority not to permit metered billing and to deny a request to deviate from the Tapping fee rate imposed under the Tapping fee resolution.

On the other hand, the Owners also asserted that the rates the Authority sought to impose were unreasonable. The substance of this latter claim implicates concerns addressed in the MAA. But as noted above, challenges to a local agency decision are initiated following a decision-making process before the local agency and arise under the LAL, whereas parties bringing challenges under the MAA initiate such actions in the courts of common pleas. Section 5607(d)(9) of the MAA, 53 Pa. C.S. § 5607(d)(9).

The nature and purpose of the action, the mechanism for relief, and the analysis for granting relief is completely different under the MAA as compared to the analysis applicable under the LAL. When a party challenges the actual rate established by an authority as unreasonable, the MAA controls the jurisdictional aspects of a rate-payer challenge. Where, however, a party seeks to challenge the discretionary power of an authority, not in its capacity to set rates, but rather in the manner by which the authority elected to exercise (or not exercise) discretionary

power that the authority itself has created, then a party correctly brings a challenge to the authority's exercise of that discretion by a challenge to that discretionary act under the LAL. Owners sought not only a decision from the Authority to be billed on a metered basis rather than on a flate rate basis, but also requested the Authority to deviate from the rates set for Tapping fees. Although Owners nowhere suggest that the Tapping fee resolution vests any discretion in the Authority, we are bound by the process selected by Owners and feel comfortable that Owners are seeking relief from a decision of the Authority, rather than raising a challenge strictly to the reasonableness of the rates under the MAA.

Hence, despite this apparent incongruity, we regard the form and nature of relief sought here as arising under the LAL, and we will proceed to address the issues as we would review any challenge to a local agency's decision under the LAL, rather than review the matter as we would if Owners had brought this action in the trial court under the MAA.

Under the LAL, this Court has held that, when a trial court conducts a hearing de novo,[12] the trial court

> may not substitute its discretion for that of [the local agency] if the evidence produced at the hearing in the court below supports the discretion exercised by [the local agency]; … the court may not interfere with [the local agency's] decision unless [the local agency] has flagrantly abused its discretion or violated the law; unless the evidence be such that if the case were being tried by a jury the court would be required to enter a nonsuit of

[12] We note that neither party has asserted any issue relating to the propriety of the trial court to conduct a de novo review. We simply observe here that there is authority for the proposition that, where a local agency conducts a hearing, de novo review may not be appropriate. *Appeal of Disciplinary Action by Lawrence Twp. Bd. of Supervisors*, 544 A.2d 1070 (Pa. Cmwlth. 1988). Neither party has raised this issue, and consequently, we will not consider this question.

> judgment n.o.v. the court is required to affirm the findings of [the local agency] even though the court as an independent fact-finding body might conclude otherwise.

City of Harrisburg v. Pickles, 492 A.2d 90, 94 (Pa. Cmwlth. 1985), *quoting City of Bethlehem v. Gawlik*, 374 A.2d 540, 542 (Pa. Cmwlth. 1977).[13]

D. DISCUSSION

1. The Trial Court's Review

As noted above, because this matter arose under the LAL, the trial court, acting pursuant to Section 754 of the LAL, developed the record. Nevertheless, as suggested in *City of Harrisburg*, a trial court, even after creating a record, must not interfere with the local agency's exercise of discretion—*i.e.*, substitute its discretion for the local agency's—unless the record demonstrates that the local agency committed an abuse of discretion or violated the law. The trial court here, while focusing, we think incorrectly, on the law arising under the MAA, did conclude that the Authority did not abuse its discretion in declining to exercise its discretion to permit metered billing.[14]

[13] On the other hand, when a party brings an action under the MAA, the trial court, already vested with exclusive jurisdiction by virtue of Section 5607(d)(9) of the MAA, would necessarily proceed in not simply de novo fashion, but in a full adjudicatory manner. In other words, the trial court would act as trial courts do, conducting a full hearing and rendering its own factual findings and legal conclusions relating to the question of whether the rates established by an authority are reasonable. As the trial court suggested in this case, however, even then a trial court's powers are circumscribed and are similar to our view of a trial court's review under the LAL. While it makes its own factual findings and legal conclusions, its ability to substitute its discretion for that of the local agency is limited.

[14] This Court's standard of review of a trial court's order in an appeal arising under the LAL, where the trial court creates a full record, is limited to determining whether the trial court committed an error of law, a constitutional violation, or an abuse of discretion. *City of Harrisburg*, 492 A.2d at 94; 2 Pa. C.S. § 754.

2. Abuse of Discretion

Our Supreme Court has summarized the situations in which a reviewing court may conclude that an abuse of discretion has occurred:

> An abuse of discretion is not simply an error of judgment. It requires much more. "[I]f in reaching a conclusion the law is overridden or misapplied, or the judgment exercised is manifestly unreasonable, or the result of partiality, prejudice, bias, or ill-will, as shown by the evidence or the record, discretion is abused."

Bedford Downs Mgmt. Corp. v. State Harness Racing Comm'n, 592 Pa. 475, 487-88, 926 A.2d 908, 916 (2007) (quoting *Mielcuszny et ux. v. Rosol*, 317 Pa. 91, 176 A.2d 236 (1934)).

We discern no error with the trial court's conclusion that the Authority did not abuse its discretion. Under the LAL, the trial court did not need to engage in an analysis of whether the rate scheme is arbitrary, non-uniform, or unreasonable. The record includes sufficient evidence indicating that the Authority engaged in a reasonable evaluation of the necessity for imposing fees in order to recoup its capital expenses and recurring and maintenance expenses. The record indicates that the Authority also evaluated the nature of the particular types of users and charges for each type of use.

The evidence indicated that the Authority's decision to deny Owners' requested relief was based upon concerns for payment of its debt, maintenance costs, and other costs associated with the proper functioning of the system. The evidence indicated that the Authority sought to impose similar rates upon similar users, such that the rates would provide for the Authority's anticipated costs. As noted by the Authority and the trial court, if the Authority were to exercise its discretion to grant the relief, and others similarly situated sought the same relief,

the Authority would ultimately be required to increase the overall rates in order to compensate for lost revenue.

Hence, despite evidence that residents of the mobile home park presently use less water (and consequently pose less of a burden on the system), we conclude that the trial court did not err in concluding that the Authority did not abuse its discretion in declining Owners' request to pay on a metered basis and in declining Owners' request for a deviation from the methodology for assessing Tapping fees.

3. Did the Trial Court Err in Concluding that the Fee Structure is Reasonable, Non-arbitrary, and Reasonably Related to the Value of the Service the Authority Provides?

While we believe that we need not address the question of whether the trial court erred in its conclusions regarding whether the Authority's fee structure is reasonable, is non-arbitrary, and is reasonably related to the value of the service (as it arises under the MAA rather than under the LAL), we will address the question in the event that the trial court had intended to exercise its exclusive jurisdiction over the rate challenges.

In considering whether a rate is reasonable under the MAA, a trial court is limited to considering whether the rate-making authority has manifestly or flagrantly abused its discretion or has created an arbitrary rate system. *Allegheny Ludlum Corp. v. Mun. Auth. of Westmoreland County*, 659 A.2d 20, 26 (Pa. Cmwlth. 1995). In essence, the trial court did independently conclude that the rates were reasonable and not arbitrary and thus held that the Authority did not abuse its discretion such as would permit the trial court to substitute its discretion

for that of the Authority. *Patton-Ferguson Joint Auth. v. Hawbaker*, 322 A.2d 783 (Pa. Cmwlth. 1974).[15]

At the outset we note that Section 5607(d)(9) of the MAA, 53 Pa. C.S. §5607(d)(9), while requiring rates to reasonable and uniform, authorizes authorities to:

> fix, alter, charge and collect rates and other charges in the area served by its facilities at reasonable and uniform rates to be determined by it for the purposes of providing for the payment of the expenses of the authority, the construction, improvement, repair, maintenance and operation of its facilities and properties.

The MAA provides authorities with significant discretion to impose fees and charges, including tapping fees, for the construction and maintenance of facilities. *Curson v. W. Conshohocken Mun. Auth.*, 611 A.2d 775, 777 (Pa. Cmwlth. 1992).

Owners first argue that the rate structure is not reasonably proportional to the value of the service provided. In considering this question, courts focus not on the value of the *use* of the service to a rate payer, but rather on the value of the *service rendered*, and in this regard the inquiry involves not only services actually consumed, but also the value of the service that is "readily available for use." *Washington Realty Co., Inc. v. Mun. of Bethel Park*, 937 A.2d 1146, 1150 (Pa. Cmwlth.), *aff'd*, 599 Pa. 684, 960 A.2d 457 (2008) (quoting *Patton-Ferguson Joint Auth.*, 322 A.2d at 786).

In *Glen Riddle*, this Court held that the costs of underlying capital improvements are pertinent in considering whether the rates charged are reasonably proportional to the value of the service provided. *See also, Curson*, 611

[15] This Court's standard of review in an appeal from a trial court in a matter challenging the reasonableness of rates under the MAA is limited to considering whether the trial court's factual findings are supported by substantial evidence and whether the trial court applied the law properly in light of the facts. *Hornstein v. Lynn Twp. Sewer Auth.*, 885 A.2d 44 (Pa. Cmwlth. 2005), *aff'd*, 586 Pa. 508, 895 A.2d 544 (2006).

A.2d at 777. Based upon the evidence of the cost of the construction and maintenance of the sewer system, we would agree with the trial court that Owners have not established that the rates are not reasonable proportionally to the value of the service provided or available.

With regard to the question of whether the rates are reasonable, Owners, relying upon *Ridgway Township Municipal Authority v. Exotic Metals, Incorporated*, 491 A.2d 311 (Pa. Cmwlth. 1985), contend that the evidence submitted in this case, suggesting that their mobile home park units use considerably less water than the 280 gallons per day for which they are assessed, supports their position that the rates set by the Authority are unreasonable. In *Ridgway*, this Court affirmed a trial court's conclusion that the minimum monthly water rate imposed upon a commercial user was unreasonable as applied to that user. The trial court found that, although the authority billed the user for 50 EDUs per month, its actual use was only approximately 12 ½ EDUs per month. A witness for the user testified that, because (1) the authority increased its rates by sixty-five percent and (2) the authority was not able to meet the user's increased needs for water, the user had constructed a system of wells that satisfied some of the user's water needs and reduced its need to draw from the authority's system.

This Court's decision in *Ridgway* suggests that, once the user had constructed its own water system, its need for the authority's system essentially became only valuable as a back-up.

This Court noted that, in considering the question of whether a rate is reasonable, courts must review the value of the service as well as the quantitative use of the service. Testimony indicated that the user acknowledged some value of paying for the service for instances such as a breakdown in the user's own system

and, therefore, agreed with the authority that payment of some amount was appropriate. On the other hand, the authority argued that implementation of a rate reduction could place the authority's financial base in jeopardy. This Court accepted that the rate adjustment might require some modification in the authority's financial structure, but that despite that possibility, the user had satisfied its burden to prove that the rate imposed was unreasonable. *Ridgway,* 491 A.2d at 313.

Owners point out that, in *Ridgway*, the actual approximate use was only 25% of the rate charged the user (12 ½ EDUs compared to 50 EDUs), and that in this case the evidence of metered use at the mobile home park suggests that residents use approximately 90 gallons per day, or approximately only 34% of the amount for which they are charged. Hence, they contend that *Ridgway* provides strong support for their position.

The trial court distinguished *Ridgway* by noting that this case involves a flat rate that is imposed on all single-family dwelling unit; whereas, the rate imposed in *Ridgway* involved an apparently single commercial or industrial user. Further, as the Authority points out, *Ridgway* is distinguishable in that the authority in that case apparently did not submit detailed evidence regarding its financial position. The rate payer in that case used less water because it had its own water system and purported to use the authority's facilities as a back-up. Hence, there was support for the conclusion that the *value of the service* was not properly reflected in the rates applied to that user. In this case, where the residents of the mobile home park will have capacity available similar to capacity deemed necessary to similar users, we conclude that *Ridgway* is distinguishable and not controlling.

Owners also suggest that, because the Rate Resolution carves out mobile home parks as a separate type of use, the Authority could alter its fees to Owners without violating the rule that rates must be uniform. Although Owners are correct in asserting that authorities may establish different classifications of users and assess different rates based upon the distinctions of particular classifications, *Glen Riddle Park*, Owners have not argued that the classification scheme established in the Rate Resolution is not uniform. Even if Owners had argued that the rates are not uniform, we would disagree. The similar treatment of mobile home parks and other single family dwellings, including apartment buildings, belies any claim of a lack of uniform classifications or treatment.

For the reasons discussed above, we conclude that the Authority's decision not to exercise its discretion to permit metered billing and to decline to modify the EDU measure for the mobile home park does not constitutes an abuse of discretion under the MAA. Based upon the foregoing discussion, if we had been required to consider this matter under the MAA, we would have concluded that the Authority did not abuse its discretion or create an arbitrary rate system.

4. The Trial Court's Factual Findings Regarding the Authority's Financial Status

Owners argue that some of the trial court's factual findings relating to the Authority's fixed annual costs are improperly based upon testimony of estimates of such costs. Owners contend that such evidence of estimates is insufficient and that the trial court could not rely upon such findings in the absence of evidence of actual expenses in reaching its legal conclusion. Owners, however, point to no legal support for the proposition that testimony of reasonable and fact-based estimates is insufficient to support the trial court's findings of fact relating to

expected annual fixed costs. As the Authority points out, some actual figures were unavailable because of the relative young age of the system.

Further, we agree with the Authority that the purpose of the testimony was to provide the trial court with a means by which to measure the value of the service in relation to the fees assessed. The issue of value of a service to a user is implicated only in matters arising under the MAA, and hence not pertinent to the trial court's review under the LAL. Further, even in an analysis of the system's value to Owners, they have pointed to no authority in support of their contention that actual numbers were required to enable the trial court to engage in a review of that issue. Therefore, we find no merit to Owners' argument regarding the sufficiency of the evidence.

E. CONCLUSION

Based upon the foregoing, we conclude that the trial court did not err in concluding that the Authority did not abuse its discretion in denying Owners' request to pay for sewage service on a metered basis under the Rate Resolution and in declining to deviate from the scheme set forth in the Tapping fee Resolution. Further, even if a challenge under the MAA were properly before the trial court and this Court, we would conclude that trial court did not err in holding that the Authority did not manifestly abuse its discretion or impose an arbitrary or unreasonable rate on Owners.

P. KEVIN BROBSON, Judge

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Irvin H. Peifer and J. Kathleen Peifer,	:	
Appellants	:	No. 1407 C.D. 2009
	:	No. 1408 C.D. 2009
v.	:	
	:	
North Codorus Township Sewer Authority	:	
	:	

O R D E R

AND NOW, this 21st day of May, 2010, the order of the Court of Common Pleas of York County is affirmed.

P. KEVIN BROBSON, Judge