**[Cite as *Bd. of Rootstown Twp. Trustees v. Rootstown Water Serv. Co.*, 2012-Ohio-3888.]**

**IN THE COURT OF APPEALS**

**ELEVENTH APPELLATE DISTRICT**

**PORTAGE COUNTY, OHIO**

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| BOARD OF ROOTSTOWN TOWNSHIP TRUSTEES, | : | **O P I N I O N** |
| Plaintiff-Appellee, | : | **CASE NO. 2011-P-0084** |
| - vs - | : | |
| THE ROOTSTOWN WATER SERVICE COMPANY, | : | |
| Defendant-Appellant. | : | |

Civil Appeal from the Portage County Court of Common Pleas, Case No. 2007 CV 00014.

Judgment: Affirmed.

*Victor V. Vigluicci*, Portage County Prosecutor, *Theresa M. Scahill*, Assistant Prosecutor, and *Christopher J. Meduri*, Assistant Prosecutor, 241 South Chestnut Street, Ravenna, OH 44266 (For Plaintiff-Appellee).

*Antonios C. Scavdis, Sr.,* and *Antonios C. Scavdis, Jr.,* Scavdis & Scavdis, L.L.C., 261 West Spruce Avenue, P.O. Box 978, Ravenna, OH 44266 (For Defendant-Appellant).

DIANE V. GRENDELL, J.

**{¶1}** Defendant-appellant, Rootstown Water Service Company, appeals the Order and Journal Entry of the Portage County Court of Common Pleas, declaring it to be responsible for the care, maintenance, repair, testing and replacement of fire hydrants located on its water lines, in an action filed by the plaintiff-appellee, Board of Rootstown Township Trustees. The issues before this court are: (1) whether a township

may be compelled to apply levied funds toward a specific purpose where the language of the authorizing resolution tracks R.C. 5705.19(I); (2) whether a township may be required to bear the responsibility for all township hydrants based on an express agreement to maintain certain, specified hydrants; (3) whether a trial court exceeds its authority and jurisdiction under the Declaratory Judgment Act by ordering a private non-profit water company to maintain hydrants on its lines; (4) whether a genuine issue of material fact precluding summary judgment exists where there were differences in the parties' stipulated facts; and (5) whether a township may be held responsible for maintaining fire hydrants under theories of implied law, unjust enrichment, and/or equitable estoppel despite a governmental entity's immunity to quasi-contractual claims. For the following reasons, we affirm the decision of the court below.

**{¶2}** The Rootstown Water Service Company is a non-profit Ohio corporation, incorporated, and formed, among other purposes, to construct, operate and maintain a water system for the sale and distribution of water in Rootstown Township and neighboring communities.

**{¶3}** On January 3, 2007, the Board of Rootstown Township Trustees filed a Complaint for Declarative Judgment against the Water Company. It is admitted that "[t]here are currently several hundred fire hydrants located in Rootstown Township that are connected to, and are a part of the water system owned and operated by the Defendant Water Company." The Complaint alleged that the present "controversy has arisen because generally fire hydrants are considered a part of the water supply & distribution system and in the absence of any express contractual agreements the

responsibility for the care, maintenance, repair and replacement of fire hydrants should be that of the water company."

**{¶4}** Rootstown Township sought a declaration that Rootstown Water Company "is the owner of, and responsible for the care, maintenance, repair and replacement of all of the fire hydrants located in the Township of Rootstown, Portage County, Ohio that are a part of, and connected to the defendant Water Company's water mains and lines, with the exception of only the twenty (20) hydrants provided for by [an] 1952 express written contractual agreement between the Rootstown Township Board of Trustees and the Rootstown Water Company."

**{¶5}** On January 29, 2007, Rootstown Water Company filed its Answer and Counterclaim for Declaratory Judgment. The Water Company contended that the Township "is responsible for the care, maintenance, testing, repair and replacement of all of the fire hydrants which are located in Rootstown Township," by virtue of "its duties as a political subdivision under Ohio law" and its obligations under a 1952 Contract entered into by the parties.

**{¶6}** On July 7, 2009, Rootstown Water Company filed its Motion for Summary Judgment.

**{¶7}** On August 14, 2009, Rootstown Township filed its Memorandum and Brief in Opposition to Defendant's Motion for Summary Judgment, considered as a motion for summary judgment by a September 3, 2009 Journal Entry.

**{¶8}** On September 1, 2011, the parties filed a Qualified Stipulation with the trial court, regarding the existence and location of hydrants in Rootstown Township.

**{¶9}** On September 7, 2011, the trial court entered its Order and Journal Entry, granting summary judgment in favor of the Board of Rootstown Township Trustees. The court held that Rootstown Water "shall be responsible for all * * * fire hydrants on its water lines, inclusive of the care, maintenance, repair, testing and replacement of those hydrants," with the exception of 20 hydrants specified in the 1952 Contract and 12 additional hydrants purchased directly by the Township and/or by agreement through the developer, for whose care and maintenance the Township "shall be responsible."

**{¶10}** On October 6, 2011, Rootstown Water filed its Notice of Appeal. On appeal, Rootstown Water raises the following assignments of error:

**{¶11}** "[1.] The trial court erred in granting summary judgment to the Township and in failing to find that the Rootstown Township fire levies that were passed were obligated to be used by the Township to maintain, repair or replace fire hydrants within the township."

**{¶12}** "[2.] The trial court erred in granting summary judgment to the township and in failing to find that a contractual commitment existed between the Township and Rootstown Water Service Company requiring the Township to participate in the maintenance, repair and replacement of fire hydrants within the township."

**{¶13}** "[3.] The trial court erred, abused its discretion, and exceeded its jurisdiction under ORC 2721, *et seq.*, the Declaratory Judgment Act, when it ordered that appellant 'shall' maintain fire hydrants on its water lines."

**{¶14}** "[4.] The trial court erred, and abused its discretion, in granting summary judgment since there is a genuine issue of material fact as to the number of fire hydrants acquired by, and owned by, the Township."

**{¶15}** "[5.] The trial court erred in failing to grant appellant's summary judgment motion."

**{¶16}** "[6.] The trial court erred in failing to find that the Township was liable for fire hydrant costs and maintenance under an implied in law, unjust enrichment or equitable estoppel theory of liability."

**{¶17}** "[7.] The trial court erred in failing to declare that the appellant has the right to assess a reasonable charge for providing fire hydrant service to the township."

**{¶18}** "[8.] The trial court erred in ordering the uncompensated appropriation of fire hydrant service by the township which is a taking under the U.S. and Ohio Constitutions without just compensation."

**{¶19}** Pursuant to Civil Rule 56(C), summary judgment is proper when (1) the evidence shows "that there is no genuine issue as to any material fact" to be litigated, (2) "[t]he moving party is entitled to judgment as a matter of law," and (3) "it appears from the evidence * * * that reasonable minds can come to but one conclusion and that conclusion is adverse to the party against whom the motion for summary judgment is made, that party being entitled to have the evidence * * * construed most strongly in the party's favor." A trial court's decision to grant summary judgment is reviewed by an appellate court under a de novo standard of review. *Grafton v. Ohio Edison Co*., 77 Ohio St.3d 102, 105, 671 N.E.2d 241 (1996); *Arnott v. Arnott*, __ Ohio St.3d __, 2012-Ohio-3208, __ N.E.2d __, ¶ 1 ("an appellate court reviewing a declaratory-judgment matter * * * should apply a de novo standard of review in regard to the trial court's determination of legal issues in the case"). "A de novo review requires the appellate court to conduct an independent review of the evidence before the trial court without

deference to the trial court's decision." *Peer v. Sayers*, 11th Dist. No. 2011-T-0014, 2011-Ohio-5439, ¶ 27; *Arnott* at ¶ 16 ("[n]ever have we deferred to the judgment of the trial court on issues of law").

**{¶20}** In its first assignment of error, Rootstown Water contends that the Township Trustees were required to expend funds, derived from a series of fire levies, to maintain, repair and/or replace the fire hydrants located within the Township. According to Rootstown Water, the language of the levies indicated that they were for the purpose of the providing and maintaining of "fire apparatus," such as hydrants: "Now that the votes are in, and the taxes have been assessed and collected, the Township trustees have chosen not to expend the funds in accordance with the voters[']  will as was introduced to them in the ballot language."

**{¶21}** Rootstown Township placed tax levies on the general election ballots for March 2, 2004, November 2, 2004, and November 8, 2005. These levies were made pursuant to R.C. 5705.19(I), which authorizes taxes to be raised for fire protection services and other emergency services, in excess of the "ten-mill limitation" contained in R.C. 5705.02. As "special levies," i.e. levies for a particular purpose, the use of the revenue raised was restricted to the purpose for which the levies were made. Ohio Constitution, Article XII, Section 5 ("every law imposing a tax shall state, distinctly, the object of the same, to which only, it shall be applied"); R.C. 5705.10(C) ("[a]ll revenue derived from a special levy shall be credited to a special fund for the purpose for which the levy was made"); *In re Petition for Transfer of Funds*, 52 Ohio App.3d 1, 2, 556 N.E.2d 191 (2nd Dist.1988) ("Section 5, Article XII of the Ohio Constitution * * * prevents

taxes levied for a specific purpose which the voters approve being used for a purpose the voters did not approve").

**{¶22}** "It is a general rule * * * that revenues from a tax levy may be used for any purpose within the language of the resolution and ballot * * * and, if there are more funds than had been anticipated, the expenditures may be expanded to include previously unanticipated projects that come within the purposes set forth in the resolution and ballot language." 2006 Ohio Atty.Gen.Ops. No. 2006-028, at 13-14, n. 10; 2000 Ohio Atty.Gen.Ops. No. 2000-048, at 5 (opinions cited).

**{¶23}** The language of the Rootstown Board of Township Trustees' Resolution, authorizing the levy to be placed on the March 2, 2004 ballot, states that the proposed taxes are "for the purpose of providing and maintaining fire apparatus, appliances, buildings, or sites therefore, or sources of water supply and materials therefore, or the establishment and maintenance of lines of fire alarm telegraph or the payment of permanent, part-time, o[r] volunteer firemen or fire fighting companies to operate the same, including the payment of the firemen employer's contribution required under section 742.34 of the Revised Code, or to purchase ambulance equipment or to provide emergency medical services operated by a fire department or fire fighting company, as provided by Ohio Revised Code section 505.39 and 505.19(I)."

**{¶24}** The parties acknowledge that this language tracks the language of R.C. 5705.19(I), the language of the March 2, 2004 ballot, and the language of subsequent Resolutions authorizing renewal levies in November 2, 2004, and November 8, 2005.

**{¶25}** We agree with the conclusion of the lower court that the three levies "did not create an obligation from the [Township] for the benefit of [Rootstown Water]."

Nothing in the record substantiates Rootstown Water's claim that "the voters believed that they were voting for the maintenance, replacement and repair of fire hydrants." The language of the Resolution broadly allows for many permissible uses of the taxes raised, exclusive of the maintenance, repair, and/or replacement of the fire hydrants located along the Rootstown Water's lines. 2012 Ohio Atty.Gen.Ops. No. 2012-014, at 4 ("an expenditure is lawful if it is consistent with the authorizing resolution and ballot language for the * * * tax levy and if the * * * Township Board of Trustees determines, in the reasonable exercise of its discretion, that the expenditure serves the public interest"); *Adams v. Bd. of Trustees of Newton Twp.*, 2nd Dist. No. 85-CA-52, 1986 Ohio App. LEXIS 9827, *8 (Dec. 9, 1986) ("it is not a function of the courts to assess the wisdom of, or choose among, various alternative plans for fire protection because such decisions rest with the officials of the political subdivision who are responsible for fire protection").

**{¶26}** The first assignment of error is without merit.

**{¶27}** In the second assignment of error, Rootstown Water argues that Rootstown Township is contractually bound to maintain, repair, and replace hydrants located within the Township. Rootstown Water relies on a 1952 Contract entered into by Rootstown Water and the Township Board of Trustees.

**{¶28}** The 1952 Contract contains the following recitations: Rootstown Water "exist[s] for the purpose of purchasing water from the City of Ravenna, and distributing and selling it to domestic users in and about Rootstown Center, through water lines owned by [Rootstown Water.] * * * [A]t the time of the construction of said water lines in 1946, [Rootstown Township] purchased some Twenty [20] fire hydrants, and same

were connected to said water mains, in the installation of which [Rootstown Township] purchased all hydrants and all connecting lines * * *[.] [S]aid hydrants are without meters or other means of determining the water used through same * * *[.] [I]t is the * * * desire of the parties hereto to set forth a definite agreement between the parties hereto as to the ownership and maintenance of said hydrants * * *."

**{¶29}** The minutes of the proceedings of the Township Trustees from January 1946 attest the purchase of seventeen fire hydrants by the Township, "to be installed at intervals * * *, from Ely Road to Rootstown Center, thence one qua[r]ter mile east and west of Rootstown Center, and five eighths of a mile south from Rootstown Center." The other three hydrants are not otherwise attested in the record before the court.

**{¶30}** The 1952 Contract provides that Rootstown Township "is now and shall hereafter at all times have absolute ownership of such hydrants, and all connecting lines to same, valves etc., and shall be solely responsible for repair and maintenance of same at all times; [Rootstown Township] also shall have sole control of the use of said hydrants, shall have the right to install additional hydrants on present lines of [Rootstown Water], or any extensions thereof, and to do at all times, all things necessary to provide the maximum fire protection possible."

**{¶31}** The 1952 Contract further provides that "[t]his contract shall be for a period of the calendar year of 1952, and * * * shall be renewed for additional one-year terms by proper action of the governing boards of the parties hereto * * *."

**{¶32}** There is no evidence in the record that the terms of the 1952 Contract were ever formally renewed by the parties.

**{¶33}** The trial court's September 7, 2011 Order and Journal Entry held that Rootstown Township "is solely responsible for [the] maintenance, repair, replacement, testing, and care" of the "20 hydrants referred to in the 1946 minutes and the 1952 contract." The court further held that Rootstown Township would be responsible for twelve additional hydrants, installed at various times since 1953, consistent with its right under the 1952 Contract "to install additional hydrants."

**{¶34}** Contrary to Rootstown Water Company's position, the terms of the 1952 Contract cannot be construed to impose responsibility on Rootstown Township for the maintenance of any hydrants except for the twenty "said hydrants" mentioned in the Contract and twelve subsequently installed hydrants. The Water Company has not identified any provision in the 1952 Contract that would justify the expansion of Rootstown Township's responsibility beyond the limits determined by the trial court.

**{¶35}** The second assignment of error is without merit.

**{¶36}** In the third assignment of error, Rootstown Water Company contends that the trial court exceeded its authority under the Declaratory Judgment Act by ordering that it "shall" maintain the fire hydrants on its water lines. According to the Water Company, the lower court was limited to "declar[ing] the rights and obligations of the parties with respect to the fire hydrants at issue." In the absence of any "statute, administrative regulation, or other authority * * * impos[ing] a duty or obligation upon a private non-profit water company to maintain its fire hydrants," the order that the Water Company "shall" do so constitutes an abuse of discretion.

**{¶37}** Under the Ohio Declaratory Judgment Act, "courts of record may declare rights, status, and other legal relations whether or not further relief is or could be

claimed." R.C. 2721.02(A). "The purpose of a declaratory judgment action is to dispose of 'uncertain or disputed obligations quickly and conclusively,' and to achieve that end, the declaratory judgment statutes are to be construed 'liberally.'" *Mid-American Fire & Cas. Co. v. Heasley*, 113 Ohio St.3d 133, 2007-Ohio-1248, 863 N.E.2d 142, ¶ 8, citing *Ohio Farmers Indemn. Co. v. Chames*, 170 Ohio St. 209, 213, 163 N.E.2d 367 (1959).

**{¶38}** Contrary to Rootstown Water Company's position, the trial court's Order does not state that the Company "shall maintain" its hydrants or prescribe any particular action or conduct to be undertaken, but, rather, that it "shall be responsible for hydrants * * * on its water lines, inclusive of the care, maintenance, repair, testing and replacement of those fire hydrants." The court's declaration that the Water Company shall be responsible for maintaining the hydrants it purchased or installed on its water lines expresses nothing more than the duty, imposed by law on all persons, to exercise ordinary care. *Velotta v. Leo Petronzio Landscaping, Inc.*, 69 Ohio St.2d 376, 378, 433 N.E.2d 147 (1982); *Cincinnati St. Ry. Co. v. Snell*, 54 Ohio St. 197, 202, 43 N.E. 207 (1896) (a party is "bound to use ordinary care, such degree of care as a man of ordinary prudence commonly uses under like circumstances; care proportioned to the danger to be avoided, and the consequences which might result from want of it, conforming in amount and degree to the particular circumstances under which it was to be exercised"); *see Harris v. Bd. of Water & Sewer Commrs.*, 294 Ala. 606, 612, 320 So.2d 624 (1975) ("even if the water company had no duty to provide the fire hydrants in the first place, once the hydrants were there, the water company did have an imperative duty to see that reasonable care was exercised in the maintenance and repair of the hydrants").

**{¶39}** Such a determination regarding the responsibility for maintaining hydrants is within a court's authority under the Declaratory Judgment Act to "declare rights, status, and other legal relations." Under the Act, Ohio courts have often pronounced similar declarations of rights and responsibilities. *E.g.*, *Ravenna Twp. Trustees v. Ravenna*, 117 Ohio App.3d 152, 153, 690 N.E.2d 49 (11th Dist.1996) (declaration of ownership and responsibility to maintain a public cemetery); *State ex rel. Miller v. Columbus*, 77 Ohio App.3d 599, 602, 602 N.E.2d 1242 (10th Dist.1991) (declaration as to whether a city could properly disclaim its duty to maintain fire hydrants); *State ex rel. Smith v. Columbus*, 10th Dist. No. 78AP-656, 1979 Ohio App. LEXIS 10814, *6 (Apr. 24, 1979) (declaration that the city, as the owner of the water lines, has the duty to maintain and repair the attached fire hydrants: "[i]f the City of Columbus owns the fire hydrants in question, it naturally follows that the duty to maintain and repair such hydrants rests upon the owner").

**{¶40}** The third assignment of error is without merit.

**{¶41}** In its fourth assignment of error, the Rootstown Water Company argues that summary judgment could not be properly granted because a genuine issue of material fact exists with respect to the number of fire hydrants owned by Rootstown Township and for which the Township is responsible.

**{¶42}** Rootstown Water Company's argument is based on the parties' Qualified Stipulation, filed with the trial court on September 1, 2011. This filing was comprised of two lists, prepared by each party, identifying the number and location of fire hydrants on the Water Company's lines in Rootstown Township. The parties agreed that there are 294 such hydrants, 117 of which were purchased by the Water Company and 139 of

which were purchased by developers. The parties agreed that prior to 1953, Rootstown Township had purchased 20 hydrants as indicated in the 1952 Contract. The parties further agreed that the Township purchased 21 hydrants after 1953. For 12 of these hydrants, a location is indicated[1]; but for 9 of these hydrants, no location is specified.

**{¶43}** The trial court, in its Order and Journal Entry, held that Rootstown Township shall be responsible for the 20 hydrants referenced in the 1952 Contract, plus the 12 hydrants subsequently purchased for which a location is indicated. Contrary to Rootstown Water Company's contention, the parties did not disagree about "the correct number of hydrants." Each party's list comprising the Qualified Stipulation was in agreement as to the 20 hydrants referenced in the Contract and to the location of 12 of the hydrants subsequently purchased. Likewise, each party acknowledged that no location was specified for the remaining 9 hydrants. The evidence regarding the purchase of several of these hydrants merely authorizes their purchase without stating a purpose. In some instances, a hydrant is purchased to replace an already existing hydrant. In other instances, the hydrant is purchased to be "left in stock" or "to have on hand in case of needed repairs." The fact that neither party could provide a location for these 9 hydrants does not constitute a genuine issue of material fact precluding summary judgment. Given the uncertain location and disposition of these hydrants, the court was within its discretion by not assigning responsibility for them to the Township.

**{¶44}** The fourth assignment of error is without merit.

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1. The parties' lists further agree about the locations specified: 1 hydrant for Ward Davis Extension; 2 hydrants for Route 44 north of Ely Road; 1 hydrant for Phile Drive; 1 hydrant to the northeast corner on Sabin; 1 hydrant for Muzzy Lake; 2 hydrants for the Bird Allotment; 1 hydrant for Carrie Drive; 1 hydrant for the Gleason Allotment; and 1 hydrant for the new township building at New Milford Road. The twelfth hydrant was installed by a developer on Kenneth Drive, but was subject to a written agreement with Rootstown Township.

**{¶45}** Under the fifth assignment of error, Rootstown Water Company asserts that the trial court erred in failing to grant its Motion for Summary Judgment and declare that Rootstown Township was solely responsible for maintaining the fire hydrants within its boundaries. The Water Company raises the following arguments, which are raised under other assignments of error: funds raised through fire protection levies must be expended to maintain the hydrants (first assignment of error); the Township is contractually committed to maintain the hydrants (second assignment of error); and the Township is bound under theories of implied contract to maintain the hydrants (sixth assignment of error). These arguments are rejected for the reasons stated under their respective assignments of error.

**{¶46}** The fifth assignment of error is without merit.

**{¶47}** In its sixth assignment of error, Rootstown Water Company maintains that the Board of Trustees is responsible for maintaining the fire hydrants located within the Township based on theories of quasi-contract and equitable estoppel.

**{¶48}** Rootstown Water Company relies on a theory of implied or quasi-contract, encompassing the doctrines of unjust enrichment and quantum meruit. *Brainard v. Toledo*, 118 Ohio Misc.2d 158, 166, 770 N.E.2d 153 (C.P.2001); *Hummel v. Hummel*, 133 Ohio St. 520, 525, 14 N.E.2d 923 (1938) ("[i]n contracts implied in law * * * liability arises out of the obligation cast by law upon a person in receipt of benefits which he is not justly entitled to retain"). The elements of a quasi-contract/unjust enrichment claim include: "(1) a benefit conferred by a plaintiff upon a defendant; (2) knowledge by the defendant of the benefit; and (3) retention of the benefit by the defendant under circumstances where it would be unjust to do so without payment ('unjust enrichment')."

(Citation omitted.) *Hambleton v. R.G. Barry Corp.*, 12 Ohio St.3d 179, 183, 465 N.E.2d 1298 (1984).

**{¶49}** As a political subdivision of the State of Ohio, Rootstown Township cannot be bound under a theory of implied or quasi-contract. "It is a long-standing principle of Ohio law that 'all governmental liability *ex contractu* must be express and must be entered into in the prescribed manner, and that a municipality or county is liable neither on an implied contract nor upon a *quantum meruit by* reason of benefits received.'" *Kraft Constr. Co. v. Cuyahoga Cty. Bd. of Commrs.*, 128 Ohio App.3d 33, 44, 713 N.E.2d 1075 (8th Dist.1998), citing 20 Ohio Jurisprudence 3d, Counties, Townships and Municipal Corporations, Section 278, at 241 (n.d.); *Schmitt v. Educational Serv. Ctr. of Cuyahoga Cty.*, 8th Dist. No. 97623, 2012-Ohio-2210, ¶ 17 ("political subdivisions cannot be made liable upon theories of implied or quasi contract"); *McCormick v. Niles*, 81 Ohio St. 246, 251, 90 N.E. 803 (1909).

**{¶50}** The cases relied upon by Rootstown Water Company for the proposition that a township may be found liable in quasi-contract for fire hydrant services are distinguishable in that the parties involved were political subdivisions. In *Bd. of Cty. Commrs. of Jefferson Cty. v. Bd. of Twp. Trustees of Island Creek Twp.*, 3 Ohio App.3d 336, 445 N.E.2d 664 (7th Dist.1981), the court of appeals acknowledged "[t]he Ohio rule exempting municipalities from liability by quasi-contract," as well as "[t]he uniqueness of the instant case [given] that there are two public subdivisions involved." *Id.* at 338. Thus, the holding of *Cty. Commrs. of Jefferson Cty.* is qualified so that township trustees "may be held liable * * * where they are dealing with another public subdivision of government." *Id.* at paragraph two of the syllabus.

**{¶51}** The court of appeals in *Cty. Commrs. of Jefferson Cty.* cited, as does Rootstown Water Company, to a California appellate decision, *Arcade Cty. Water Dist. v. Arcade Fire Dist.*, 6 Cal.App.3d 232, 85 Cal.Rptr. 737 (1970). The *Arcade Cty.* case is similarly distinguishable in that the parties involved were political subdivisions. The *Arcade Cty.* case is further distinguishable in that the parties had previously entered into a contract for the provision of hydrant services. In *Arcade Cty.*, the defendant fire districts had been paying the plaintiff water district a flat rate for hydrant services. After the water district changed its rate, the fire districts continued to receive the hydrant services, but without paying for them. Efforts to negotiate an agreed-upon rate were unsuccessful. The California appellate court found that these past dealings "indicate[d] an implied agreement to pay not the demanded price but a reasonable price." *Id.* at 238. So, also, in *Cty. Commrs. of Jefferson Cty.*, the parties had a prior written contract for the provision of fire hydrants, which provisioning had continued without compensation after the lapse of the agreement. *Id.* at 337.

**{¶52}** In the present case, there has never been an agreement, express or implied, between Rootstown Township and the Water Company for the provision of fire hydrants. According to the terms of the 1952 Contract, the Township assumed "absolute ownership" and sole responsibility for the maintenance of twenty specific hydrants, and the right to install additional hydrants, which it did on about twenty occasions over the next fifty years. These hydrants only represent a fraction of the 294 hydrants existing on the Water Company's lines in Rootstown Township. The majority of the hydrants have been installed by the Water Company and/or private developers. There is no evidence in the record of the Township having compensated the Water

Company or the developers for the installation or the maintenance of these hydrants. As the trial court acknowledged in its Order and Journal Entry, "[t]his case has gotten to this point because of decades of informality where details of the law were not properly addressed by either party." The decades of informality characterizing the Township and the Water Company's relationship further distinguishes the present case from *Cty. Commrs. of Jefferson Cty.* and *Arcade Cty.* Accordingly, we do not find these cases persuasive for the proposition that the Township may be bound under a theory of implied or quasi-contract. *Arcade Cty.* at 238 ("the mere fact that the county may have benefited by the lack of caution of the utility in failing to have a contractual relationship with the county prior to the extension of its main is not alone sufficient to give rise to liability").

**{¶53}** Rootstown Water Company presents an alternative argument in support of its position that Rootstown Township Trustees are obligated to maintain the fire hydrants within the Township.

**{¶54}** On July 7, 1965, the Board of Trustees of the Rootstown Water Service Company passed a resolution, whereby it "assign[ed] to the Rootstown Township Trustees the complete ownership of and operation and maintenance of all existing fire hydrants," and declared that "all new hydrants installed from and after July 1, 1965, shall be, as to time and place of installation, fully determined by said township trustees." The minutes of the proceedings of the Township Trustees for July 7, 1965, note that "the water board passed a resolution that the water Co. [w]ould not install anymore fire hydrants and then bill the Township Trustees and that the Township Trustees should have full control of Fire hydrant location and installation."

**{¶55}** Rootstown Water Company contends that the July 7, 1965 resolution, considered in conjunction with the instances where Rootstown Township has repaired and/or replaced hydrants, "establish[es] a pattern and course of dealing" between the parties indicating that the Township has "fully accepted the assignment of all fire hydrants in the Township." We disagree.

**{¶56}** As noted by the trial court, the Rootstown Township Trustees never formally acted on the Rootstown Water Company's resolution. If the passage of the resolution had any effect on the course of dealings between the parties, there is no evidence of this in the record. Rather, the evidence demonstrates that responsibility for the installation and maintenance of fire hydrants remained uncertain. For example, according to the Qualified Stipulation, following the passage of the 1965 Water Company resolution, the Water Company and private developers purchased and installed approximately 250 fire hydrants in the Township, while the Township Trustees purchased fewer than 20 during this time period. In December 1971, the Board of Trustees of the Rootstown Water Service Company passed another resolution providing that "the cost of the Hydrants and the cost of Installing same shall be included in the over-all cost of the line extension," and, "therefore be assumed by the developer and/or the property benefitting by the line extension, except as may be otherwise previously agreed upon either with the Board of Township Trustees or the Trustees of the Water Company."

**{¶57}** Construing this evidence most strongly in favor of Rootstown Water Company, reasonable minds could not conclude that the Rootstown Township Trustees

are obligated under a theory of implied or quasi-contract to be responsible for the maintenance of all fire hydrants within the Township.

**{¶58}** The sixth assignment of error is without merit.

**{¶59}** In its seventh assignment of error, Rootstown Water Company argues that the trial court erred by failing to include in its Order that the Company maintain the hydrants on its lines, a provision for compensation from Rootstown Township for the cost of maintenance. The Water Company relies upon *Cty. Commrs. of Jefferson Cty.* for the proposition that an entity providing water service to a township is entitled to compensation for such service. *Cty. Commrs.*, 3 Ohio App.3d at 339 ("the appellant township having accepted the water service, we find there was no obligation upon the appellee county to supply free water service to the township").

**{¶60}** The Rootstown Water Company's argument necessarily fails because it did not request such relief from the trial court. As noted above, the trial court's Order and Journal Entry merely declared which parties would be responsible for the maintenance of existing fire hydrants; it did not attempt to define the legal or contractual relationship between the parties. In *Cty. Commrs.*, by contrast, the water supplier "filed an action in the court of common pleas for $47,040, interest and costs for fire hydrants previously installed." *Id.* at 337. In the present case, the parties did not present evidence or argument as to how, from whom, and for what services the Water Company is compensated. The nearest the Company came to raising such issues was in its Counterclaim, wherein it sought a declaration that it was "not required to provide use of private personal property and water for township and public use without due and just compensation." The court's Order does not require the Company to provide free water

for the township or public use; rather, the Order declares that the Company is responsible for maintaining the hydrants installed on its lines, excepting those installed by the Township.

**{¶61}** The seventh assignment of error is without merit.

**{¶62}** In the eighth and final assignment of error, the Rootstown Water Company maintains that the trial court's Order that it is responsible for maintaining the fire hydrants on its lines "requires water customers who are members of the private non-profit water company to, in perpetuity, pay for and provide a fire hydrant service to a public entity, Township and the public at large without just compensation." According to the Water Company's interpretation of the Order, it violates the Fifth Amendment to the United States Constitution and Section 19, Article I, of the Ohio Constitution, which prohibit the taking of private property for public use without just compensation.

**{¶63}** Rootstown Water Company claims a de facto partial regulatory taking, which "requires the examination of the following three factors to determine whether a regulatory taking occurred in cases in which there is no physical invasion, and the regulation deprives the property of less than 100 percent of its economically viable use: (1) the economic impact of the regulation on the claimant, (2) the extent to which the regulation has interfered with distinct investment-backed expectations, and (3) the character of the governmental action." *State ex rel. Shelly Materials, Inc. v. Clark Cty. Bd. of Commrs.*, 115 Ohio St.3d 337, 2007-Ohio-5022, 875 N.E.2d 59, ¶ 19, citing *Penn Cent. Transp. Co. v. New York City,* 438 U.S. 104, 124, 98 S.Ct. 2646, 57 L.Ed.2d 631 (1978); *see Denver v. Denver Union Water Co.*, 246 U.S. 178, 190-191, 38 S.Ct. 278, 62 L.Ed. 649 (1918) ("there can be no question of the [water] company's right to

adequate compensation for the use of its property employed, and necessarily employed, in the public service").

**{¶64}** As in the previous assignment of error, Rootstown Water Company faults the trial court for not affording it relief that was not properly requested of the court. *State ex rel. Duncan v. Middlefield*, 120 Ohio St.3d 313, 2008-Ohio-6200, 898 N.E.2d 952, ¶ 16 ("[m]andamus is the appropriate action to compel public authorities to institute appropriation proceedings where an involuntary taking of private property is alleged") (citation omitted). As noted by the Rootstown Township Trustees, the "Water Company did not present evidence alleging that Rootstown Township had in fact used its hydrants without providing compensation, nor did it present any evidence * * * as to what amount it would be owed for such use."

**{¶65}** Rootstown Water Company also misinterprets the import of the trial court's Order, which merely assigns responsibility for maintaining the hydrants within Rootstown Township. The Order does not prohibit the Water Company from charging a reasonable hydrant fee, enjoin the Water Company from removing hydrants, or mandate the provision of free water service. The situation, as described by Dr. Al Friedl, a past president of the Water Company, was that, "through the years," the Company and Township cooperated in the installation of hydrants to enhance fire protection in the Township. "Eventually, the fire hydrants were not purchased separately by the Township since developers were required to install them in new developments." The lines were "turned over to" and "accepted by" the Water Company, but with the "understanding" that they belonged to and would be maintained by the Township. The evidence in the record demonstrated that this "understanding" was

informal, and not legally binding on the Township. Accordingly, the trial court properly declared that the Water Company is responsible for the hydrants attached to the lines "turned over to" and "accepted by" the Water Company, excepting those purchased by the Township. The Order does not further define the relationship between the parties.

**{¶66}** The eighth assignment of error is without merit.

**{¶67}** For the foregoing reasons, the Order and Journal Entry of the Portage County Court of Common Pleas, declaring the Rootstown Water Company to be responsible for the care, maintenance, repair, testing and replacement of fire hydrants located on its water lines, is affirmed. Costs to be taxed against appellant.

CYNTHIA WESTCOTT RICE, J.,

MARY JANE TRAPP, J.,

concur.