STATE OF RHODE ISLAND

PROVIDENCE, SC. **SUPERIOR COURT**

[Filed: April 28, 2022]

WALKER LOFTS, LP; and WALKER LOFTS 2, LP,	:	
Plaintiffs,	:	
	:	
v.	:	**C.A. No. PC-2022-02054**
	:	
THE TOWN OF LINCOLN,	:	
Defendant.	:	

DECISION

LICHT, J.

I

Facts & Travel

Plaintiffs Walker Lofts, LP (Walker) and Walker Lofts 2, LP (Walker 2) are Pennsylvania Limited Partnerships (collectively, the "Plaintiffs").Walker is the owner of property located in the Town of Lincoln at Assessor's Plat 2, Lots 84, 95, and 96, while Walker 2 is the record owner of property also located in the Town of Lincoln at Tax Assessor's Plat 2, lots 98 and 100 (collectively, the "Property"). The Property is known as the historic Saylesville Mill Complex and it borders the City of Central Falls.

On October 27, 2021, Plaintiffs obtained preliminary plan approval to develop the Property into 126 residential units, with thirty-two (32) units being designated as low- and moderate-income units (the "Project"). Plaintiffs are working with the State to preserve and restore historical features at the Property and are working under tight time constraints due to certain historical restrictions.

Plaintiffs estimate that the Project will require an investment of approximately $18,000,000. The Property is currently assessed at $1,686,400 and taxed in the amount of $42,514.14. To make the Project financially feasible, Plaintiffs need a tax stabilization agreement or tax agreement from the Town of Lincoln.

In May 2003, the qualified electors for the Town of Lincoln met at their Financial Town Meeting (hereinafter *generally*, "FTM") and passed a resolution authorizing the Town Administrator with the approval of the Town Council, to enter into tax stabilization agreements in accordance with G.L. 1956 § 44-3-9 (hereinafter *specifically*, the "2003 FTM"). Explaining the rationale behind the resolution, then Lincoln Town Administrator, Sue Sheppard, clarified to attendees that the Town "really needed to have the approval of the [FTM] in order to do any tax stabilization plans[,] . . . if the voters felt that this was an appropriate ***economic development tool*** for our community, it would be available for the Town Administrator and the Town Council, within the design parameters." Pls.' Mot for Declaratory J., Ex. B, at 50:17-51:5; 51:23-52:4 (emphasis added). Dennis Auclair, then-President of the Lincoln Town Council, likewise testified during the 2003 FTM that "[w]e need concurrence of the people of this Town to stimulate economic development, jobs, growth and additional taxes for this Town." *Id.* at 54:23-55:5. Richard Foster, a Town Council member at the time, advocated that the resolution should be viewed as "***a tool*** that can be used to encourage businesses to expand their operations in the Town[] [and] move into the Town." *Id.* at 56:20-57:6 (emphasis added). Foster further clarified that he did "not envision [the resolution] would be available to every business that moves into Town," but, rather, "***it may be a useful tool*** to . . . increase the tax base of this Town." *Id.* (emphasis added).

As the current iteration of this authority, § 44-3-9 provides, in relevant part, that:

> "the electors of any city or town qualified to vote on a proposition to appropriate money or impose a tax when legally assembled, may

> vote to authorize the city or town council, for a period not exceeding twenty (20) years, and subject to the conditions as provided in this section, to exempt from payment, in whole or in part, real and personal property which has undergone environmental remediation, is historically preserved, or is used for affordable housing, manufacturing, commercial, or residential purposes, or to determine a stabilized amount of taxes to be paid on account of the property…" Section 44-3-9(a)(1).

This statute also delineates the processes and requirements for a municipality's review—and subsequent granting—of an application for tax exemption or stabilization.

On September 21, 2004, roughly a year-and-a-half after the 2003 FTM, the Town Council adopted an ordinance: Lincoln Code of Ordinances Ch. 228, Article VI. This ordinance, among other things, outlined the procedure by which the Town Administrator could negotiate, and the Town Council could conduct a hearing, approve of, and enter into a tax stabilization agreement. *See* Pls.' Mot. for Declaratory J. Ex. A, Lincoln Code § 228-21.

II

Arguments

According to Plaintiffs, an "issue has been raised regarding the 2003 FTM's power to authorize the Town Council to hear, consider and adopt tax stabilization agreements." Pls.' Mot. for Declaratory J. ¶ 9. More specifically, it was suggested to Walker Lots that they may need to file a ***resolution*** to gain approval for a tax stabilization agreement at the next annual Lincoln FTM, to be held on May 9, 2022. In response, Walker Lofts filed its Complaint for Declaratory Judgment (Complaint) on April 8, 2022. The Complaint seeks a declaration that Plaintiffs "can petition the Town Council for a tax stabilization agreement per Lincoln Code of Ordinances Chapter 228, Article VI[1] . . . and do[] not need to submit a resolution or otherwise obtain approval at the [2022]

[1] As adopted by the Town Council in September 2004 pursuant to the 2003 FTM Resolution and § 44-3-9.

FTM prior to submission and hearing before the Town Council." Pls.' Mot. for Declaratory J. at 6; *see also* Compl. ¶ 19, § (a)-(c).

More specifically, Plaintiffs seek a Declaration, under G.L. 1956 § 9-30-1, that:

> "a. [T]he actions of the [2003 FTM] . . . in authorizing the Town Council the ability to enter into tax stabilization agreements and/or allow tax exemptions for future years were valid;
> "b. The current [Lincoln] Town Council and [Lincoln] Town Administrator have the legal authority to hear and enter into tax stabilization agreements or allow for tax exemptions which comply with R.I. Gen. Laws § 44-3-9;
> "c. The actions of the qualified electors at the 2003 FTM allow for the Town to enter into tax stabilization agreements[and or] grant tax exemptions pursuant to R.I. Gen. Laws § 44-3-9 were not limited to a certain tax year and the authority granted applies to all future tax years."

To buttress their position, Plaintiffs argue that the authorizing statute, § 44-3-9, is unambiguous and deliberately not limited in time or to a specific tax year or a specific grant. Rather, the 2003 FTM prospectively granted authority to the Town Council beyond that particular tax year. To interpret either § 44-3-9 or § 228-21 of the Lincoln Town Code as more limited in scope would lead to absurd consequences that would negatively impact Lincoln taxpayers.

Not surprisingly, Defendant reads § 44-3-9 differently and contends that it authorizes a "statutory two-step process" for a town to enter into a tax stabilization agreement; specifically, "(1) the [FTM] authorizes the town council to enter into a tax stabilization agreement and (2) the town council holds public hearings, makes findings of fact as set forth in the statute, then enters into an agreement with the property owner that fits the parameters of the statute." Def.'s Obj. to Pls.' Mot. for Declaratory J. at 3. Defendant contends, therefore, that the procedural mechanism outlined in § 228-21 of the Lincoln Town Code (in which the Town Administrator first negotiates the terms and conditions of the tax stabilization agreement, and then the Town Council holds hearings, makes findings of fact and then ratifies the agreement) is *ultra vires* and therefore, null

and void. In other words, the Town asserts that each specific project that seeks a tax treaty must first have the FTM authorize it and then the Town Council, if it chooses, can hold hearings and make the necessary findings as required by § 44-3-9.

Thus, Defendant requests that the Court go beyond merely denying Plaintiffs' Motion and instead declare that "authorization from the Lincoln [FTM] is necessary before the Town Council can enter into a tax stabilization agreement with Plaintiffs." *Id.* at 5.

III

Standard of Review

Under the Uniform Declaratory Judgment Act (UDJA), the Superior Court possesses the '"power to declare rights, status, and other legal relations whether or not further relief is or could be claimed."' *P.J.C. Realty, Inc. v. Barry*, 811 A.2d 1202, 1207 (R.I. 2002) (quoting § 9-30-1). It is the function of the trial justice to undertake fact-finding and then decide whether declaratory relief is appropriate. *Providence Lodge No. 3, Fraternal Order of Police v. Providence External Review Authority*, 951 A.2d 497, 502 (R.I. 2008).

The Court's power under UDJA is broadly construed and allows the trial justice to "facilitate the termination of controversies [.]" *Malachowski v. State*, 877 A.2d 649, 656 (R.I. 2005). Therefore, the plaintiff must present the Court with an actual controversy when seeking declaratory relief. *Millett v. Hoisting Engineers' Licensing Division of Department of Labor*, 119 R.I. 285, 291, 377 A.2d 229, 233 (1977). Further, it is well-established that a trial court's "decision to grant or to deny declaratory relief under the [UDJA] is purely discretionary*." Sullivan v. Chafee*, 703 A.2d 748, 751 (R.I. 1997).

In this matter, there is no dispute as to the facts. The parties simply read § 44-3-9 differently. The Court will exercise its discretion and proceed to grant declaratory relief and terminate the controversy between the Plaintiffs and the Town.

IV

Analysis

A

Delegation of Authority

Section 44-3-9(a)(1) states that "the electors of any city or town qualified to vote on a proposition to appropriate money or impose a tax when legally assembled, may vote to authorize the city or town council, for a period not exceeding twenty (20) years, and subject to the conditions as provided in this section, to exempt from payment . . . real and personal property . . ." On reading this section of the statute, a novice Rhode Island lawyer might contend that because of its location in the sentence, the "*for a period not exceeding twenty (20) years*" clause specifies the maximum length of the authorization given by the qualified electors to the town council, *not* the duration of the tax exemption. However, under that interpretation there would be no statutory limit on the term of the exemption—an absurd result. *See Kaya v. Partington*, 681 A.2d 256, 261 (R.I. 1996) (Rhode Island courts "will not construe a statute to reach an absurd result.").

The Court understands the common practice by cities and towns in Rhode Island is that the 20-year limit applies solely to the length of a potential tax treaty, *not* the transfer of authorization from the FTM to the town council. *See, e.g.*, § 4.4.4 Tax Stabilization Agreements (R.I.G.L. § 44-3-9), RICLE-PGLU § 4.4.4, ("Section 44-3-9 of the Rhode Island General Laws specifically authorizes the electors of any city or town to authorize the city or town council, for a period not exceeding twenty years, to exempt from payment any real or personal property that . . . [.]"). That

is why the developers of the Providence Place Mall sought legislation from the General assembly to authorize the City Council of the City of Providence to enter into a thirty-year tax treaty. *See* § 42-63.5-3.[2]

An examination of the legislative history confirms conclusively that the twenty years qualifies the tax treaty rather than the delegation of authority.

In 1892, the General Assembly enacted the initial version of § 44-3-9 which read:

> "Section 1. The electors of any town or city qualified to vote on a proposition to impose a tax, when legally assembled, ***may vote to exempt***, or may authorize the town or city council of such town or city, ***for a period not exceeding one year***, to exempt from taxation ***for a period not exceeding ten years***, such manufacturing property as may hereafter be located in said town or city in consequence of such exemption, and the land on which such property is located." P.L. ch. 1088 (emphasis added)

Unlike the present "*Exemption or stabilizing of taxes on property*" statute, which specifies a single time limit (20 years), the 1892 statute contained two distinct time limits: one year's time for delegation of the authority of qualified electors to their respective municipal council, and ten years' time maximum for the length of the tax exemption itself. Additionally, this initial 1892 version only exempted property engaged in "manufacturing," a thriving concern in the state at the time. It is also interesting to note that the electors themselves could have granted the exemption.

In 1916, the General Assembly expanded the one-year authorization limit to two years in those "towns or cities where elections are held biennially." P.L. 1916, ch. 1376. By 1962, the General Assembly dropped the one-to-two-year cap on authority delegation, but notably kept the 10-year exemption language: "the [town] electors . . . may vote to authorize the town council of

[2] The Court can also take judicial notice that the proponents of the recently announced plan to rescue the Superman Building indicate that the General Assembly will have to pass legislation authorizing the Providence City Council to enact a thirty-year tax treaty.

such town, for a period not exceeding ten (10) years . . . to exempt from payment . . . [.]" P.L. 1962, ch. 135. The current version of the statute came about through the 1998 amendments to Gen. Laws § 44-3-9, P.L. 98-106, which increased the 10-year exemption cap to the now familiar 20-year limit.

Applying the legislative history of the Rhode Island property tax exemption statute to the present matter, § 44-3-9 clearly enables a FTM to delegate its duty to authorize tax stabilization agreements to the town council. This allocation of power to town councils was expressly limited to one-to-two-year grants in earlier editions of the statute when, in 1962, the "time limit" qualifying the power was removed entirely while the power itself (*i.e.*, to "vote to authorize the city or town council to . . . exempt from payment . . . [.]") remained. As such, this Court declines to read omitted durational words back into the statute and instead "give[s] effect to the General Assembly's intent" which is best "found in the plain language used in the" current version of the statute. *Steinhof v. Murphy*, 991 A.2d 1028, 1036 (R.I. 2010). Pursuant to § 44-3-9, FTM's may authorize town councils to approve tax stabilization agreements and need not reissue such power on an annual or bi-annual basis. *See, e.g.*, *Lang v Municipal Employees' Retirement System of Rhode Island*, 222 A.3d 912, 922 (R.I. 2019) (presumption that the General Assembly does not neglect to include material and intended qualifiers when authoring statutes).

Yet even if the present version of § 44-3-9 could be classified as "ambiguous," the "intent and purpose of the Legislature" is clarified by the intentional omission of the one-to-two-year limit from earlier versions of the statute. *In re Tetreault*, 11 A.3d 635, 639 (R.I. 2011). Namely, that a FTM may delegate its authority to enter tax stabilization agreements to its town council indefinitely.

B

The 2003 FTM Resolution as an Economic Development "Tool"

At the 2003 FTM, qualified Lincoln Electors considered a resolution to "authorize the Town Administrator with the approval of the Town Council to enter into tax stabilization ***agreements*** in accordance with [R.I. Gen.] Laws 44-3-9." Pl.'s Ex. B, 2003 Tr. of Annual Financial Town Meeting of the Town of Lincoln at 6:7-15 (emphasis in original). During consideration, multiple members of Town governance referenced the resolution as a "tool" designed to spur business development in the Town and the commercial tax base along with it. *See id.*, at 50:17-51:5; 51:23-52:4; 56:20-57:6.

Tracing § 44-3-9's development from 1892 to the present, this statute has been considered a way that a community can assist its economic development. In an early case that challenged the constitutionality of the original statute, our Supreme Court stated:

> "It is argued that the exemption in this case is equivalent to taking a taxpayer's money, and giving it to the manufacturer. It is not quite that. The theory of the transaction is that a public benefit will accrue to the town and its inhabitants by the introduction of the business enterprise, equivalent to an exemption from taxes for a certain time, and on this ground it is offered." *Crafts v. Ray*, 22 R.I. 179, 183, 46 A. 1043, 1045 (1900).

Over the years the General Assembly added numerous qualifying properties to the statute (*e.g.*, from "manufacturing properties" to "historic," "affordable," "residential" properties, etc.). In addition, the General Assembly has required the municipal council to make findings that all is sound in economic development terms concerning these properties prior to entering a tax stabilization agreement. *See* § 44-3-9(a)(1)(i)(A-D).[3] Add to this the 1962 amendments, which

[3] "the city or town council determines that: (i) Granting of the exemption or stabilization will inure to the benefit of the city or town by reason of:

removed a provision from the original statute expressly providing that the FTM could *itself* vote directly on the stabilization agreement in lieu of voting to authorize the municipal counsel to conduct that function,[4] and the pattern becomes clear: § 44-3-9 is an economic development "tool."

Such an interpretation of the statute makes sense to anyone with a passing knowledge of basic economic development principles. Municipalities frequently compete with one another to land an attractive economic development. The FTM meets once a year on a date designated in the town charter. City and town councils, by contrast, meet regularly, once, or twice a month and can even schedule special meetings. Why would the General Assembly hamstring *towns* by requiring a FTM to authorize a specific project which can only happen on one particular day of the year and yet let *cities* approve a project any time? Entrepreneurs and developers need a much more flexible timetable and the Town's interpretation of § 44-3-9 could not be what the General Assembly intended.

Section 44-3-9 allows the FTM to authorize a town council "to exempt from payment, in whole or in part, real and personal property . . . [.]" The General Assembly did not insert the word

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> (A) The willingness of the manufacturing or commercial concern to locate in the city or town, or of individuals to reside in such an area; or
> (B) The willingness of a manufacturing firm to expand facilities with an increase in employment or the willingness of a commercial or manufacturing concern to retain or expand its facility in the city or town and not substantially reduce its work force in the city or town; or
> (C) An improvement of the physical plant of the city or town which will result in a long-term economic benefit to the city or town and state; or
> (D) An improvement which converts or makes available land or facility that would otherwise be not developable or difficult to develop without substantial environmental remediation . . . [.]"

[4] *Compare* "[t]he electors of any town or city qualified to vote on a proposition to impose a tax, when legally assembled, ***may vote to exempt***, or may authorize the town or city council of such town or city . . . to exempt from taxation . . . [,]" *with*, "[e]xcept as hereinafter provided, the electors of any town qualified to vote on a proposition to appropriate money or impose a tax when legally assembled***, may vote to authorize the town council of such town*** . . . [.]" P.L. ch. 1088 (emphasis added); P.L. 1962, ch. 135 (emphasis added).

"specific" before "real and personal." As such, it intended to give FTM's the power to give their respective town councils the ability to compete in the world of Rhode Island economic development with cities.

This Court finds nothing in a fair reading of the § 44-3-9 or its history that could lead to the conclusion that the FTM must authorize each project before the Lincoln Town Council can enter into a tax treaty. Rather, the 2003 FTM did what its leaders asked it to do and handed its Town Council a tool to promote economic development in the Town.

While there is no case from our Supreme Court which has addressed this issue, the continuing legal education publication on Rhode Island Land Use Law concurs: "Thus, the first threshold here is whether the city or the town already has a tax stabilization ordinance … Once the city or town council is so authorized, the specific agreement can be negotiated." RICLE-PGLU, *supra*, § 4.4.4.

V

Conclusion

For the foregoing reasons, the Court grants Plaintiffs' request for declaratory relief and hereby declares that:

1. The actions of the FTM in 2003 in authorizing the Town Council the ability to enter into tax stabilization agreements and/or allow tax exemptions for future tax years were valid;

2. The current Town Council and Town Administrator have the legal authority to hear and enter into tax stabilization agreements or allow for tax exemptions which comply with R.I. Gen. Laws § 44-3-9; and

3. The actions of the qualified electors at the 2003 FTM allow for the Town to enter into tax stabilization agreements and or grant tax exemptions pursuant to §44-3-9 were not limited to a certain tax year and the authority granted applies to all future tax years.

Counsel shall submit an appropriate order.

RHODE ISLAND SUPERIOR COURT

Decision Addendum Sheet

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COURT: **Providence County Superior Court**

DATE DECISION FILED: **April 28, 2022**

JUSTICE/MAGISTRATE: **Licht, J.**

ATTORNEYS:

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