Supreme Court Upholds Bond Validation for Gulch Redevelopment

The City of Atlanta adopted a redevelopment plan for a blighted and dilapidated area known as The Railroad Gulch. The Gulch area was designated for redevelopment under the Urban Redevelopment Law (O.C.G.A. 36-61-1 et seq.) and was designated as an enterprise zone under the Enterprise Zone Employment Law (O.C.G.A. 36-88-1). The city, the city's Downtown Development Authority (DDA), and Spring Street LLC (a private developer) entered into an enterprise zone development agreement under which the developer would acquire the land and construct a live/work community in several distinct phases. A platform would be constructed to raise the level of the property to that of surrounding streets. Once finished, homes and businesses would be constructed in additional phases.

To finance the project, the city and the DDA established a financing program which included revenue bonds to be issued by the DDA. Because of designation of the project as an enterprise zone, the city would collect infrastructure fees form qualifying businesses and service enterprises that would eventually be established in the Gulch. The revenue bonds, issued to the developer as incentive for constructing the project, were secured solely by the infrastructure fees. The city and the DDA entered into an intergovernmental agreement (IGA) for the city to collect the infrastructure fees and pass them onto the DDA to service outstanding revenue bonds. The DDA would turn the fees over to the trustee of the bond account for payment to the developer. The timing and amount of the distribution of the revenue bonds was tied directly to construction progress and growth of businesses (and corresponding infrastructure fees. Neither the city nor the DDA had any obligation to pay for the revenue bonds other than by transferring the collected infrastructure fees. The developer had no rights to pursue any funds other than those fees. If the fees were ultimately insufficient to cover the bond debt, the developer had no recourse for the resulting loss against the city or the DDA. Bonds were to be issued incrementally to ensure that they would be secured by appropriate infrastructure fees. The DDA was required to get a report form a feasibility consultant confirming that the annual forecasted fees would equal no less than 110 percent of the maximum debt service of all outstanding revenue bonds. This process was intended to assure that the bond issuance remained financially sound and feasible. The DDA sought to validate a maximum bond amount of $1,250,000,00.00.

To summarize: 1) the DDA would issue revenue bonds in incremental amounts tied to progress in the redevelopment of the Gulch enterprise zone; 2) the revenue bonds will be available only to the developer, who will earn the bonds with development and construction work completed within the Gulch using the developer's own money; 3) the bond debt service will be limited solely to infrastructure fees collected from businesses within the Gulch and passed along to the DDA for bond repayment; and 5) the developer ahs certain strictly limited rights to enforce the transfer of those fees, but has no right whatsoever to any other funds of the city or DDA.

At the validation proceeding in superior court, the bonds were validated. Intervenors appealed with multiple arguments, but the Supreme Court affirmed.

The first contention was that a wholly separate hearing was required for considering their validation objections. The Court held that under O.C.G.A 36-82-77(a), all questions of law and fact are to be heard and determined in the validation proceedings.

Next, they argued that they did not become parties to validation proceedings until the day after the trial court held its first hearing. The Court found this to be meritless stating that the record showed they were full participants from the outset and that the trial court held them to be parties and allowed them to testify and enter evidence.

Third, they argued that the trial court failed to make legally adequate findings of fact and conclusions of law as to whether the bond proposal and the security therefor, was sound, feasible, and reasonable as required under O.C.G.A. 9-11-52(a). The Court again disagreed. Here, after three days of lengthy hearings, two orders were issued setting forth extensive findings and conclusions. Thus, there is a clear statement of the trial court's reasoning and sufficient basis upon which this Court could assess the trial court's conclusion.

Next, the IGA was alleged to be unlawful because the city lacked the authority to perform its obligations thereunder. The Court noted the 4 needed requirements under Article IX, Section III, Paragraph I of the constitution for a valid IGA: 1) there must be a contract between political subdivisions; 2) it cannot last for more than 50 years; 3) it must be for joint services, the provision for services, or joint or separate use of facilities or equipment; and 4) it must deal with activities, services, or facilities which the contracting parties are authorized by law to undertake. The IGA satisfied the first three requirements on its face. The fourth requirement is satisfied under O.C.G.A. 36-88-6(g)(4) which allows the collection of annual enterprise zone infrastructure fees and the pledging thereof as security for revenue bonds issued for 'development or infrastructure' within the enterprise zone. Even though 'development or infrastructure' are not defined, the construction a work/live community in a blighted area certainly qualifies under the ordinary meaning of the terms. Further, O.C.G.A. 36-44-2 clearly contemplates a general intent that the exercise of redevelopment powers may involve partnering with private parties.

Fourth, it was argued that the imposition of infrastructure fees under the Enterprise Zone Act violated Article IX, Section II, Paragraph VII(c) since that community redevelopment provision only allows for the creation of enterprise zones and tax exemptions for qualifying businesses. The Court held that nothing in that provision of the Constitution prohibits, precludes, or limits the exercise of the power of the General Assembly (under Article III, Section VI, Paragraph I) to make all laws not inconsistent with the Constitution. Thus, even though Article IX, Section II, Paragraph VII(c) fails to mention 'fees', the General Assembly could provide for such in O.C.G.A. 36-88-6(g) under the authority of Article III, Section VI, Paragraph I.

Next, it was argued that the city and the DDA intended to extend tax exemptions to any and all retailers within the enterprise zone regardless of whether they are qualifying enterprises. The

Court noted that this claim is not supported by the record which showed the city's ordinance clearly limited infrastructure fees and corresponding exemptions only to qualifying businesses that created at least five full-time jobs.

Finally, it was argued that the bond issuance was not sound, feasible, and reasonable because the projected infrastructure fee revenues would be inadequate to secure $1.25 billion worth of revenue bonds. The Court brushed this aside noting the incremental nature of the financing plan. The standard of whether a proposal is sound, feasible, and reasonable is a question for the trial court and its findings must be sustained if there is any evidence to support them. Since the incremental draw down bonds are only issued if sufficient fee revenues are projected to service the bonds and since economic feasibility reports must confirm this, sufficient safeguards have been built in to justify the trial court's holding.

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