CITATION: *Oro-Medonte Property Owner's Association v. The Corporation of the Township of Oro-Medonte*, 2023 ONSC 2713
COURT FILE NO.: CV-21-969
DATE: 20230503

SUPERIOR COURT OF JUSTICE - ONTARIO

RE: ORO-MEDONTE PROPERTY OWNER'S ASSOCIATION, Plaintiff

AND:

THE CORPORATION OF THE TOWNSHIP OF ORO-MEDONTE, Defendant/Moving Party

BEFORE: C. M. SMITH J

COUNSEL: James J. Feehely, Counsel for the Plaintiff/Responding Party

Christopher J. Williams and Brian Chung, Counsel for the Defendant/Moving Party

HEARD: February 8, 2023, by ZOOM

ENDORSEMENT ON DEFENDANT'S SUMMARY JUDGMENT MOTION

PROCEDURAL BACKGROUND

[1] This matter arose as a result of a dispute between the plaintiff, the Oro-Medonte Property Owners Association (the "OMPOA"), and the defendant, The Corporation of the Township of Oro-Medonte (the "Township"), over the legality of user fee by-law 2020-074 passed by the Township which imposes fees on users of the local water system.

[2] The OMPOA asks that the by-law be quashed for illegality and the system be declared a municipal system. In the event the system is found to be in fact a private system then the OMPOA has asserted it would be taking issue with the reasonableness of the rate charged.

[3] At the heart of the matter is an issue about the ownership of the water system used by the members of the OMPOA, that being whether it is privately owned or has in fact been assumed by the Township, and whether the amounts being charged by the Township, pursuant to the impugned by-law, are properly classified as user fees or as development charges.

[4] The OMPOA commenced this action against the Township and seeks the following relief:

(1) a declaration that a certain portion of a drinking water system is designated as a municipal drinking water system;

(2) an order quashing the relevant sections of the by-law in issue; and

(3) an interim order restraining the Township from imposing the fees contemplated in the by-law.

[5] The Township brings this motion for summary judgment and seeks an order dismissing the plaintiff's claim, as well as costs.

FACTUAL BACKGROUND

[6] The residents of the Horseshoe Valley area currently receive their household water through two separate systems. Depending on the location of their properties, township residents receive their water by way of either the Zone 1 or the Zone 2 distribution system.

[7] The Zone 1 system was originally constructed by the owners of the Horseshoe Valley Resort ("the resort") in order to supply water to the resort and to adjacent residential developments on the north side of Horseshoe Valley Road. The Ministry of Environment, Conservation and Parks (MECP), who regulate and licence water systems in Ontario, has classified the Zone 1 system as a "non-municipal year-round drinking water system."

[8] The Zone 2 system is classified by the MECP as a "large municipal drinking water system". It is owned and operated by the Township and supplies water to those residents located on the south side of Horseshoe Valley Road.

[9] The Township is engaged in the process of upgrading and integrating the two systems. That necessitates significant connection fees for each existing residence currently served by the Zone 1 system. It also means significant additional development charges for as yet undeveloped lots,

Positions of the parties

1. The Township/moving party

[10] The Township starts from the position that the water system in question is in fact privately owned by the owners of the resort where the infrastructure of the system is located. The Township points to the Land Registry documents regarding the property in question in support of this proposition. The Township also points to the assessment done by the Ministry of Environment Conservation and Parks, who regulate and licence water systems in Ontario, which classifies the system in question as a "non-municipal year-round residential drinking water system". The Township therefore takes the position the plaintiff's action is misconceived.

[11] The Township also points to the provisions of s. 391(1) of the *Municipal Act, 2001*. c.25, in support of its position that it has statutory authority to pass by-laws that provide for the recovery of costs incurred by the municipality related to the administration, enforcement, and the acquisition and replacement of capital assets.

[12] The Township submits it passed the impugned by-law after first undertaking significant public engagement and consultation throughout the community, steps the Township was not required to take. Those consultations eventually resulted in a significant reduction in the amounts sought to be recovered by the Township. The Township therefore points out the impugned by-law is rightly the subject of criticism in that it does not seek to recover enough funds from the ratepayers to satisfy the true cost of the improvements.

[13] The Township further submits the OMPOA is in fact seeking to have the impugned by-law quashed based on unreasonableness. The Township points again to the provisions of the *Municipal Act*, specifically s. 272, which provides that a by-law passed in good faith shall not be quashed or subject to review because of unreasonableness or supposed unreasonableness.

[14] Finally, the Township submits the relief sought by the OMPOA, being the quashing of the impugned by-law, is only available by way of an application under s. 273 of the *Municipal Act*, not by way of an action as is the case here.

[15] The Township therefore submits the action brought by the OMPOA should be dismissed in its entirety, with costs.

The OMPOA

[16] The OMPOA seeks to have the Township's motion for summary judgment dismissed with costs.

[17] The OMPOA contends the Zone 1 system is in fact already owned by the Township and claims the additional fees created by the impugned by-law are in effect an attempt to collect the equivalent of a development charge and bear no relationship to the costs actually incurred by the Township regarding this system.

[18] In support of its position the OMPOA points to three historical agreements consisting of the Water Rights Guarantee Agreement dated May 23, 1980, an Amending Agreement dated February 10, 1982, and an agreement known as the Oro Agreement dated October 1, 1990. The OMPOA contends these three agreements collectively provide conclusive evidence of the municipality’s intent to own and control the system in question. The OMPOA contends the system in question is “fully a municipal water system,” based on these three agreements.

[19] The OMPOA also contends the fees charged pursuant to the impugned by-law are excessive. They submit there is no nexus between the fees charged under the impugned by-law and the actual costs to the Township of the service provided.

[20] The OMPOA has not alleged bad faith, procedural irregularity, or excess of jurisdiction on the part of the Township.

ISSUES

[21] I see the issues to be determined on this motion being as follows:

1. Is this an appropriate case for determination by motion for summary judgment?

2. Is there a genuine issue requiring a trial with respect to the plaintiff's claim that the Zone 1 drinking water system is actually a municipal drinking water system?

3. Is there a genuine issue requiring a trial with respect to the question of whether the impugned by-law should be quashed or rescinded?

ISSUE #1: Is this an appropriate matter for summary judgment?

[22] Pursuant to Rule 20.04(2)(a), summary judgment is to be granted if the court is satisfied there is no genuine issue requiring a trial.

[23] Rule 20.04(2)(b) requires a court to grant summary judgment where the parties have agreed to all or part of the claim being determined by a summary judgment and the court is satisfied that it is appropriate to grant summary judgment.

[24] In the case of *Hyrniak v. Mauldin*, 2014 SCC 7, the Supreme Court of Canada found that there will be no genuine issue requiring a trial when a judge is able to reach a fair and just determination on the merits using the summary judgment process. The court went on to find summary judgment will be appropriate where the underlying process, (1) allows the judge to make the necessary findings of fact, (2) allows the judge to apply the law to the facts, and (3) is a proportionate, expeditious and less expensive means to achieve a just result.

[25] In a summary judgment motion the responding party, in this case the OMPOA, must present its case at its best and most complete. In the vernacular, it must "put its best foot forward." The responding party must provide evidence of specific facts showing there is a genuine issue requiring a trial: see rule 20.02.

[26] This case is not driven by the *viva voce* evidence of witnesses, rather it is driven by documents. Each party has filed affidavit material in order to place the various relevant and pertinent documents before the Court. The Township has filed an affidavit for that purpose sworn by Michelle Jacobi, the Director of Environmental Services for the Township. The OMPOA has filed an affidavit sworn by Timothy Taylor, a resident of the area who has researched the local municipal record in relation to the water system issue. Each has been thoroughly cross-examined on their affidavits. The transcripts of those cross-examinations have been filed as part of the record.

[27] Mr. Williams advised both parties agree this is an appropriate case for use of the summary judgment procedures crafted by the SCC in the *Hyrniak v. Mauldin* decision. Mr. Feehely did not take issue with that observation. However, certain comments made by Mr. Feehely on behalf of

the OMPOA, in both his written and oral submissions[1], left me with some uncertainty about his position on the matter. However, as Mr. Feehely did not take issue with proceeding by way of the summary judgment process, and given the documentary nature of the case and the materials filed by each party, I am of the view the evidence before me allows me to make the necessary findings of fact, and to apply the law to those findings. I therefore find proceeding by way of summary judgment is the most proportionate, most expeditious, and least expensive means of achieving a just result. I also note that regardless of who the moving party may be, it is equally open to me to find for or against either party.

ISSUE #2: is there a genuine issue requiring a trial with respect to the plaintiff's claim the Zone 1 system is already a municipal drinking water system?

1. Background of the ownership question

[28] As I have already noted, the Zone 1 system was originally constructed by the resort owners to supply water to the resort and to a residential subdivision constructed on lands adjacent to the resort property.

[29] The wells, the purification system, the storage tanks, the main pump, and the trunk distribution system for the Zone 1 system are all located on the resort lands. The Land Titles documents filed herein contain no easements or qualifications of title. The diagrams and maps prepared and filed in support of this matter all show the system infrastructure clearly located on the resort lands. In the absence of any evidence to the contrary I am obliged to conclude that the infrastructure of the Zone 1 water system is now, and has always been, owned by the resort owners.

[30] The resort owner is not named in this action and is not before this court. This court cannot take away ownership rights, or transfer operation of the system in question, without the actual owners of the infrastructure of that system participating in this action.

[31] The MECP, the governmental body responsible for overseeing and regulating drinking water systems in the Province of Ontario, have classified this particular system as a non-municipal system. The MECP is also not before this court.

[32] The OMPOA points to three separate agreements, noted above, as being evidence of intent on the part of the Township to assume ownership of the system in question.

[33] The Water Rights Guarantee Agreement of 1980 contemplated the waterworks system being dedicated to the Township but would continue to be operated and run by the resort owner. The document does contemplate the notion of the system being transferred to the Township however, that was predicated on certain improvements being done to the satisfaction and certification of the Township's engineer, and a formal application being made by the Township

[1] See the transcript of the submissions of Mr. Feehely on February 8, 2023, at page 3 line 29, through page 4 line 4, and on page 33, from line 25 through line 29. See also the *factum* of the OMPOA at paragraph 65 where the test for a motion to strike is set out under the heading 'Test for Summary Judgment'.

for assumption of the system. There is no evidence before me to support the notion that either of those things ever occurred

[34] The Amending Agreement from 1982 dedicates certain additional aspects of the waterworks distribution system to the Township as specified in the agreement. The agreement speaks of certain portions of the distribution pipes as being accepted and assumed by the Township, however the agreement also contemplated continued responsibility of the resort to operate and maintain the system pursuant to the 1980 agreement. The 1991 agreement between the Township and the resort owner specifically acknowledges it is an amending agreement to the 1982 agreement and again contemplates transfer of the waterworks system from the resort owner to the Township. Again, the agreement provides that the Township's engineer will complete a report with recommendations for improvements needed with those improvements to be completed prior to the assumption of the system by the Township. Again, there is no evidence before me tending to show that those steps were ever taken.

[35] The OMPOA is quite correct in its assertion the three agreements evince a desire on the part of the Township to assume control of the Zone 1 system. However, it appears to be equally true the pre-conditions to such a step have simply not been met.

[36] The Director of Environmental Services for the Township, Ms Michelle Jacobi, has sworn an affidavit which was filed herein. In that affidavit she outlined the background of these agreements before ultimately explaining the Township has still not assumed the Zone 1 system. She advises that Township Council "has not been asked, nor have they voted, to pass an assumption by-law in respect of those works." She also advises there has not been a certificate of inspection by an engineer to approve the works or any recommendation regarding assumption. She states that as of the date of her affidavit, being May 20, 2022, "the zone one system remains privately owned and operated."

[37] There are other indicia of private ownership as well. The Development Charges Background Study from August 23, 2019, reports the Township's water services "are currently serviced through a combination of municipal owned infrastructure and through a private company, [the resort owner]." A staff report to Township Council dated November 6, 2019, makes a similar observation. So does a staff report to Township Council dated April 28, 2021, which observes the resort owner owns and operates a wastewater treatment plant, as well as operates a "non-municipal year-round drinking water system, both servicing private residential connections."

[38] Notably, the users of these online systems have been paying rates set by the owner, being the resort owner, and not the rate set by the Township under its fees and charges by-law. Again, that is further indicia of non-municipal ownership of the system.

2. Does the ownership question matter?

[39] The question of ownership is actually something of a red herring. As the Township submits, the staff reports prepared by the Township, as well as the environmental assessment conducted in 2015 by AECOM, all suggest the system needs to be substantially upgraded and replaced. This would be the case regardless of who owns the system. Indeed, AECOM enumerates the following issues with the system:

- inadequate water supply and storage to accommodate planned development in the area;
- inadequate water supply and storage to accommodate integration of existing development within the service area that is not currently connected to the municipal drinking water system;
- lack of well supply redundancy;
- lack of water storage redundancy;
- lack of a standby power system.

[40] Drinking water systems in the province of Ontario are governed by the provisions of the *Safe Drinking Waters Act,* SO 2002 chapter 32. Section 11(1) of that act reads as follows;

Duties of owners and operating authorities

11 (1) Every owner of a municipal drinking water system or a regulated non-municipal drinking water system and, if an operating authority is responsible for the operation of the system, the operating authority for the system shall ensure the following:

1. That all water provided by the system to the point where the system is connected to a user's plumbing system meets the requirements of the prescribed drinking water quality standards.
2. That, at all times in which it is in service, the drinking water system,

    i. is operated in accordance with the requirements under this Act,

    ii. is maintained in a fit state of repair, and

    iii. satisfies the requirements of the standards prescribed for the system or the class of systems to which the system belongs.

3. That the drinking water system is operated by persons having the training or expertise for their operating functions that is required by the regulations and the licence or approval issued or granted for the system under this Act.
4. That all sampling, testing and monitoring requirements under this Act that relate to the drinking water system are complied with.
5. That personnel at the drinking water system are under the supervision of persons having the prescribed qualifications.
6. That the persons who carry out functions in relation to the drinking water system comply with such reporting requirements as may be prescribed or that are required by the conditions in the licence or approval issued or granted for the system under this Act. 2002, c. 32, s. 11 (1).

[41] The Township is clearly the operating authority for the Zone 1 system. As such, the Township is obliged, indeed it is required by law, to ensure the system is operated in accordance with the requirements of the *Safe Drinking Waters Act* and is maintained in a fit state of repair. In Ontario one need only consider the word "Walkerton" in order to understand the thinking and policy considerations underlying the provisions of that act.

[42] The costs incurred by the Township to make those upgrades and improvements are what constitutes the connection fee for current users of the Zone 1 system contemplated by the impugned by-law.

[43] The methodology employed by the Council leading up to its consideration of the fees and charges by-law significantly exceeded the obligations of a municipal council in passing such a by-law. The Township Council first prepared and forwarded an information flyer to all affected properties which summarized the project and associated costs. Council also made a feedback form available to all affected residents which allowed those residents to contribute to the debate. More than 98 per cent of impacted zone system customers did not respond to that form. Next, the Council organized a community focus group at which eight community representatives, including the Mayor, two Councillors, and township staff, provided interested members of the community with the background and chronology of the water operations in the area. Supporting financial data was made available. Staff were on hand to hear community concerns and to discuss proposed connection fees in the new integrated system. Project costing details and how the work would be funded were also made available.

[44] The majority of those members of the community who did participate in the feedback process were in favour of the integration plan. The impugned fee and charge by-law was subsequently passed unanimously by Township Council.

[45] The documentary evidence placed before me makes no mention of any objections to the proposed integration plans and associated fees having been raised at the time by the OMPOA, or indeed by any other ratepayer's association.

[46] The powers of a municipality to regulate its affairs are broad and are owed deference. Section 8(1) of the *Municipal Act* reads as follows;

> **8(1)** The powers of a municipality under this or any other act shall be interpreted broadly so as to confer broad authority on the municipality to enable the municipality to governance affairs as it considers appropriate and to enhance the municipality's ability to respond to municipal issues.

[47] Section 11(1) of the *Municipal Act* provides municipalities "may provide any service or thing that the municipality considers necessary or desirable for the public". This section lists 11 specific spheres of jurisdiction, the fourth of which is public utilities. There can be no question that a water system, be it non-municipal or municipal in nature, is a public utility which is both necessary and desirable for the public who live in the area which the system serves.

[48] It is also important to consider section 272 of the *Municipal Act* which provides as follows;

> **272** A bylaw passed in good faith under any act shall not be quashed or open to review in whole or in part by any court because of the unreasonableness or supposed unreasonableness of the bylaw.

[49] I also note that s. 391(1)(a) of the *Municipal Act* provides a municipality with authority "to impose fees or charges on persons for services or activities provided or done by or on behalf of it."

[50] Municipal decisions are presumed to be valid and made in good faith. A party seeking to attack such a decision bears the burden of proving the decision is not valid and is not made in good faith: see *Grosvenor v. East Luther Grand Valley (Township)*, 2007 ONCA 55 at para 26-28.

[51] Courts should take a broad and deferential approach to municipal decision making: see for example *United Taxi Driver's Fellowship of Southern Alberta v. Calgary (City),* 2004 SCC 19, and see *Stelmach Property Management Ltd. v. Kingston (City)*, 2021 ONSC 4343.

[52] Municipal governments enjoy a broad discretion in their decision-making respecting what is in the public interest: see *Nanaimo (City) v. Rascal Trucking Ltd.*, 2000 SCC 13.

[53] In the circumstances of this case, it falls to the Township to ensure the drinking water systems it supervises and manages are in full compliance with the requirements of the *Safe Drinking Waters Act.*

[54] In my view the Township was acting within its statutory authority when it passed the impugned by-law. Council had an obligation imposed on it by the *Safe Drinking Water Act*, and by its role as an operating authority, to act in the matter as it did. Council was obliged to ensure that the drinking water distribution system met drinking water safety standards and satisfied fire control flow requirements. It was obliged to ensure the system is up to standards, in proper working order, and in a good state of repair.

[55] The steps Council took were both appropriate to the matter at hand and were a proper response to pressing municipal issues. That would be the expected response from a Council conducting its affairs in an appropriate and responsible manner, regardless of who actually owns the water system under its purview.

[56] Section 391(5) of the *Municipal Act* provides the Township with authority to recover costs incurred from "the establishment, acquisition and replacement of capital assets." The water system is certainly such an asset. Section 272 of the *Municipal Act* makes it clear that such decisions of Township Council are not open to review based on "unreasonableness or supposed unreasonableness."

[57] The materials of the OMPOA make it clear that its members are understandably concerned about the prospect of having to pay a substantial connection fee of several thousand dollars per household as a result of the Township's upgrade and integration of the water systems. While the Township has agreed to amortize those payment over 25 years at zero interest it is still a significant amount.

[58] The OMPOA seeks to have the impugned by-law "quashed, rescinded or otherwise set aside" based on "illegality" however, from the materials filed it is difficult to avoid concluding the

real concern of the OMPOA is unreasonableness. The following excerpt from the cross examination of Mr. Taylor, gave me pause:

> Q. And at a high level what is it your group is hoping to achieve with this litigation?
>
> A. Well, I think the central focus is the bylaw itself, to quash the by-law.
>
> Q. And the outcome, if I can – if I can probe a bit further, the outcome is that you want reduction in the fees charged?
>
> A. Yes.[2]

Further on in the cross-examination counsel Mr. Feehely himself answered a question as follows:

> Q. If Zone 1 is found to – by the Court to be a private system as opposed to it being municipally owned, is it the Association's position that the Township's fees and charges by-law is not illegal?
>
> A. So I think you are asking me a legal question and –
>
> Q. I'm asking for the position, yeah.
>
> Mr. Feehely: Yeah. We take the position, clearly, that it's a municipal system. If the court finds otherwise then our position would be, if you're going to connect what's – yeah, there would be an issue of what's the appropriate connection fee? We have not done that analysis.
>
> Q. But the association would in that instance, be taking an issue with the reasonableness of the rate charged I assume?
>
> A. Yes.[3]

[59] It is difficult to avoid concluding the essence of the OMPOA's concerns about the impugned by-law is the amount of the fees charged, in other words "unreasonableness or supposed unreasonableness." That is not an appropriate basis for this Court to quash, or review the impugned by-law.

[60] As counsel for the Township submits, "these works are necessary, and if they are necessary somebody has to pay for them."

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[2] Transcript of Cross-Examination of Timothy Taylor dated September 6, 2022, Q.66-67
[3] Taylor Transcript, *supra*, Q. 169-172

[61] The OMPOA has not met its onus of proving the decision of Council was not valid and was not made in good faith.

[62] I therefore find the answer to the question posed in issue #2 is no, there is no genuine issue requiring a trial with respect to the plaintiff's claim the Zone 1 system is already a municipal drinking water system.

ISSUE #3: is there a genuine issue requiring a trial with respect to the question of whether the impugned by-law should be quashed or rescinded?

[63] I have a number of concerns about the arguments of the OMPOA on this issue which I wish to note.

[64] The first of my concerns involves the procedural mechanism by which the OMPOA seeks to have the impugned by-law quashed. They have proceeded by way of an action against the Township, however pursuant to s. 273(1) of the *Municipal Act* such relief can only be obtained by way of application. That has been found to be more than a mere technical violation: see *Foley v. St. Mary's (Town),* 2016 ONCA 528.

[65] That issue was brought to the attention of the OMPOA in 2021. It was raised by the Township as a significant matter in both written and oral submissions.

[66] The second concern I have involves the suggestion of bad faith raised by the OMPOA at paragraph 56 of its *factum*. The OMPOA has not plead bad faith. It should not be raising it at this late date.

[67] My third concern involves the submissions of the OMPOA regarding the issue of constitutionality, which is found at paragraphs 57 - 59 of its factum. No such issue was plead by the OMPOA, nor is there any suggestion the provincial or federal Attorney's General have been notified of a constitutional issue as required by s. 109 of the *Courts of Justice Act*, RSO 1990, Chap. C.43.

[68] Notwithstanding those concerns, in the interest of natural justice and procedural fairness I will address the main argument of the OMPOA on this issue, that being the presence or absence of a nexus between the fees charged under the impugned by-law and the cost to the Township of the service provided.

[69] The OMPOA submits there is no such nexus, and the Township is effectively imposing a development charge on existing residents. The OMPOA claims the Township has not performed an appropriate cost analysis, and further, the Zone 1 system is without deficiencies meaning the Township will incur no substantial costs in the process of integration. I will address each point in turn.

[70] The OMPOA argues the by-law is illegal regardless of the ownership status of the Zone 1 system because Council is imposing an arbitrary amount that bears no relation to the cost of the service provided nor to match revenues with administrative costs. The OMPOA suggests the fees and charges set out in the impugned by-law are in fact better characterised as development charges that ought to have been charged to the developer. The OMPOA also suggests in the absence of a

proper nexus the fees charged existing residents pursuant to the impugned by-law are actually a tax. As the Township has no authority to impose a tax the OMPOA argues the by-law is therefore void *ab initio*.

[71] The OMPOA also argues the cost analysis done by the Township is lacking analysis or supporting documentation.

[72] The Staff Report to Council dated March 12, 2020, contains a wealth of information about the background of the water system issue, the methodology used by Council to educate the community about the plan, the feedback received from the public, and the focus group results. The report also includes a detailed section on Financial/Legal Implications/Risk Management which outlined the estimated project costing broken down in to both supply and storage, as well as the forecasted cost to complete the integration. Details of project funding options were also supplied together with the Zone 1 Water Integration Fee Options which reflected the reduction to assuage ratepayer concerns. There was also a discussion of the use and impact of reserve funds to cover that reduction and an acknowledgement that might "result in revisions to capital programs across the water systems and an increased potential for additional debt/debenture to fund future capital projects."

[73] There must be a nexus between the *quantum* charged by a municipality and the costs of a service provided in order for the levy to be considered valid, otherwise the charge is a tax and void at law. A reasonable connection between the cost of a service and the amount charged is sufficient: see *Eurig Estate (Re)* 1998 CanLII 801 (SCC).

[74] I am satisfied by the content of the staff report that the fee structure set out in the impugned by-law is not a tax. I am also satisfied the Township has shown there is a reasonable connection between the cost of the water system improvements and the connection fees being charged to existing users pursuant to the impugned by-law.

[75] The Development Charges Background Study of August 23, 2019, specifically outlined the fees relating to the water system upgrades to be charged to existing developed lots, as set out in the impugned fees and charges by-law. It differentiated those fees from the proposed development charges arising from the same upgrades for new undeveloped lots. That being so, I fail to see how the fees being charged by the Township are in fact more properly described as a development charge as claimed by the OMPOA.

[76] In this case the Township has determined the system needs the proposed upgrades. It has endeavoured to supply the water services in question to its residents and there is no evidence to show it has made a profit or run a surplus in the process. Indeed, quite the contrary given the proposed reduction for current residents and the 25-year amortization at zero interest.

[77] In my view, the methodology used by Township Council, the staff reports, and the content of the Development Charges Background Study all establish a very clear nexus between the fact of the integration fee and its purpose and cause.

[78] The Development Charges Background Study clearly differentiates between the fees being charged to existing users of the system under the impugned by-law and the development charges arising from the same upgrades for new undeveloped lots.

[79] Finally, the OMPOA argues the Zone 1 system is a fully operating system without deficiencies so integration of Zone 1 into the other water system should result in no further, or substantial costs. This appears to fly in the face of the content of the AECOM report on the matter, and the listed deficiencies it found in the Zone 1 system, which I have already enumerated above.

[80] It seems to me the appropriate time to challenge the details of the Township's costing and funding proposals for this project was during the public consultation process engaged in by the Council, while the fees and charges by-law was being considered by Council, and before that by-law was passed. Based on the evidence before me, no such challenge occurred.

[81] The OMPOA has not provided evidence of specific facts to show there is a genuine issue requiring a trial.

[82] In the end the answer to the question posed by issue #3 must therefore be there is no genuine issue requiring a trial with respect to the question of whether the impugned by-law should be quashed or rescinded.

CONCLUSION

[83] For the reasons given, the summary judgment motion of the Township/moving party is granted. This action is dismissed.

COSTS

[84] If the parties cannot agree on the question of costs, then they are free to make submissions to me on the issue in writing. Each party shall file no more than three pages of written submissions, double spaced, with appropriate attachments such as offers to settle. Each party shall file a bill of costs. The Township/Moving Party shall serve and file its materials on or before May 19, 2023. The OMPOA/Responding Party shall serve and file its materials on or before May 26, 2023.

C. M. Smith, J

Date: May 3, 2023