

IN THE SUPREME COURT OF OHIO

THE DREES COMPANY, et al.,	:	CASE NO.10-1548
	:	
Plaintiffs-Appellants,	:	On Appeal from the Warren County Court of
	:	Appeals, Twelfth Appellate District
-vs-	:	
	:	Ct. of App. No. 2009-11-150
HAMILTON TOWNSHIP, OHIO,	:	
et al.,	:	
	:	
Defendants-Appellees.	:	

APPELLEES' MEMORANDUM IN OPPOSITION TO JURISDICTION

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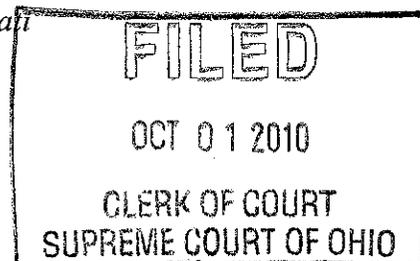
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EXPLANATION OF WHY THIS IS NOT A CASE OF PUBLIC AND GREAT GENERAL INTEREST

The Supreme Court should not accept jurisdiction because the courts below issued narrowly-tailored, fact-specific decisions construing a resolution and an Ohio statute in light of established law.

This case comes to the Supreme Court on a narrow procedural posture. The constitutional challenges to the Hamilton Township Impact Fee Resolution in the original Complaint were voluntarily dismissed. The remaining claims of Appellants were decided on two matters of close statutory interpretation. The lower courts held: (1) Hamilton Township, as a limited Home Rule Township, had the authority under R.C. Chapter 504 to enact an impact fee resolution; and (2) the Resolution as enacted was a proper fee and not an improper tax.

1. The powers of a Home Rule Township are well defined in R.C. Chapter 504.

A Home Rule Township, such as Appellee Hamilton Township, has statutorily-defined powers which are greater than those of a non-home rule township. This case does not test or confuse those statutory powers as against constitutionally-granted powers of a Home Rule Municipality. Hamilton Township has never claimed, nor did the lower courts find, that it has the powers of a municipality under the Ohio Constitution, and this case does not require the Supreme Court to interpret or establish such distinctions. Even Appellants concede that the Trial Court faithfully maintained this distinction in its ruling; nor did the Court of Appeals Decision fail to observe the distinction.

The powers of a Home Rule Township are clearly set forth by statute. The Trial Court construed the Impact Fee Resolution against the authority and limitations of the enabling statute, R.C. Chapter 504, and found that Hamilton Township was acting within its authority in enacting the Impact Fee Resolution. The Court of Appeals affirmed. The decisions below are matters of narrow statutory interpretation, based on an existing, well-developed body of law, which do nothing to

expand the parameters of the limited Home Rule Township form of government beyond what the General Assembly granted by statute.

Appellants' argument is not so much with the construction of the statute made by the Courts below, but with the Home Rule Township statute itself. Thus, Appellants frame Chapter 504 as an arbitrary dictate under which "an entirely new form of political subdivision was created," as Appellants tellingly put it, "through a stroke of a pen." (Memo in Support of Jurisdiction at 1) Appellants seem not to consider that this statute was the result of Ohio's legislative process, like every other law in the Revised Code. Appellants plainly do not like the expanded scope of powers given to limited home rule townships. However, their displeasure with the political and legislative process that resulted in Chapter 504 does not make this matter "a case of public and great general interest." While it may be a matter of great political and economic interest to Appellants, there is no legal matter of public and great general interest for this Court to decide. Even though this is a case of first impression, the careful reasoning of the Trial Court construing the statute, and the affirmance by the Court of Appeals, should be allowed to stand without further review.

Nor does the timing of the Resolution, which Appellants characterize as "collid[ing] with the worst residential housing market since the Great Depression," have any bearing on the Township's authority to enact the Impact Fee Resolution. (Were this a time of economic prosperity, it is doubtful that Appellant homebuilders would find themselves arguing the legitimacy of the impact fee.) Hamilton Township either has or does not have legal authority to impose impact fees as a result of the language of Chapter 504, and not because "impact fees threaten to dampen recovery in a crucial sector of the economy." (Memo in Support at 4) Whether a local government should revise the impact fee structure in a bad economy may be a legitimate political issue, but it is not a legal matter for this Court to decide.

The courts below expressly and consistently made their rulings with an eye directly fixed on the statutory grant of self-governance to Home Rule Townships, as well as the limitations in the statute on those powers. Unlike a non-home rule township, a Home Rule Township does not require a specific enabling statute in order to self-govern and exercise police powers. Rather, Chapter 504 provides Home Rule Townships with the authority to self-govern and exercise police powers with two primary limitations: (1) a Home Rule Township may not act in conflict with Ohio general laws; and (2) a Home Rule Township may not tax unless specifically authorized by statute. R.C. 504.04(A)(1). The Hamilton Township Resolution did not exceed those limitations.

2. The rulings below interpret the Impact Fee Resolution and R.C. Chapter 504 as a matter of standard statutory construction.

The issues before the lower courts were straightforward legal issues interpreting these two limitations. Thus, Judge Flannery examined the scope of the statutory powers of non-home rule townships under Chapter 503, as well as the constitutional powers of municipalities under the Ohio Constitution, and finally, the statutory powers of a Home Rule Township under Chapter 504. (Entry at 4-5) Thus, in analyzing the Impact Fee Resolution, the Trial Court and the Court of Appeals held that a Home Rule Township may find its exercise of police powers and self-governance limited by the existence of general laws conflicting with an enactment. The courts below examined the general laws, i.e., any enactment of the General Assembly, and found no conflict between the provisions of the Revised Code and the Impact Fee Resolution.

The other straightforward legal issue examined by the courts below was whether the impact fee was properly a fee or was in fact a tax: a Home Rule Township may not impose a tax unless expressly authorized by the General Assembly. A Home Rule Township may impose an impact fee as an exercise of police power and self-governance, unless it is actually a tax. The Trial Court

analyzed whether the Resolution enacted a fee or a tax under the guidelines provided by Ohio case law, and concluded the Resolution properly imposed a fee and not a tax.

In sum, the two dispositive analyses were whether there was a conflict between general law and the Resolution, and whether the Resolution enacted a fee or a tax. As recounted below in the discussion of the propositions of law, the legal analyses were straightforward and uncomplicated. For example, the courts examined whether the existing statutes regarding funding of road improvements posed a conflict with the Resolution. Such an analysis is by its nature a matter of narrow legal construction, rather than being a matter of public and great general interest.

With regard to the tax versus fee analysis, there is ample Ohio law inquiring into the distinction. It is notable that this Court has declined to provide “a single test that will correctly distinguish a tax from a fee in all situations where the words ‘tax’ and ‘fee’ arise.” *State ex rel. Petroleum Underground Storage Tank Release Comp. Board v. Withrow* (1991), 62 Ohio St. 3d 111, 117, 579 N.E.2d 705. Rather, this Court has held that each such determination must be made on a “case-by-case basis.” *Id.* In other words, any tax/fee analysis is closely tied to the uniqueness of a particular assessment. In this case, the rulings of the lower courts, which closely followed the language and application of the Impact Fee Resolution, are of limited application. They are essentially narrow holdings based on the unique Hamilton Township Resolution rather than being a broadly applicable matter of public and great general interest. In *Williamson v. Rubich* (1960), 171 Ohio St. 253, 259, 168 N.E.2d 876, 880, this Court distinguished between cases which are “of importance to the public” as opposed to simply being of importance to “the parties.” This case, while of importance to homebuilders such as Appellants in this economic climate, is a restricted issue decided on settled legal grounds that does not require further review.

STATEMENT OF THE CASE AND FACTS

The procedural posture of this case is relevant to the matter of jurisdiction, since the broad constitutional challenges to the Impact Fee Resolution were voluntarily dismissed and were not before the Trial Court or Court of Appeals. By agreement of counsel, the Trial Court combined Counts I thru IX and Count XVII relating to the Township's inherent authority to enact the impact fee measure, for resolution through cross-motions for summary judgment. The Trial Court bifurcated and stayed the remaining claims, Counts X thru XVI, relating to the methodology employed by the Impact Fee Resolution and containing the constitutional challenges. The Trial Court's September 30, 2009 Entry Granting Partial Summary Judgment to Defendants involved only Counts I thru IX and XVII. Plaintiffs-Appellants then moved for leave in the Trial Court to amend their Complaint to remove the bifurcated claims which were not the subject of the Motion for Partial Summary Judgment. Leave was granted, thus making the Entry Granting Partial Summary Judgment a final appealable order and entering judgment in favor of Hamilton Township. The same restricted issue was presented on appeal, and the Twelfth District affirmed.

The case as presented to this Court involves only issues of statutory interpretation, and is therefore a narrower issue than was presented in the original Complaint. This case does not present constitutional issues. The only issue presented in this appeal is the matter of Hamilton Township's statutory authority to enact the Impact Fee Resolution.

In the Trial Court, the cross-motions for partial summary judgment were premised upon an extensive Stipulation of Facts and attached exhibits. The succinct summary of the relevant facts set forth in the Trial Court's opinion is worth quoting at length, not only because it provides the factual background, but also because it demonstrates the Court's thorough command of the relevant facts in a matter which must be decided on a case-by-case basis:

Hamilton Township is a limited home rule township created under chapter 504 of the Ohio Revised Code. Its powers are described in R.C. 504.04, which allows the Township to ‘exercise all powers of local self-government . . . other than powers that are in conflict with general laws, except that the township shall comply with the requirements and prohibitions of this chapter, and shall enact no taxes other than those authorized by general law.’ (R.C. 504.04(A)(1))

In May 2007, the Township Board of Trustees passed Amended Resolution 2007-0418, which was titled ‘Amended Resolution Implementing Impact Fees within the Unincorporated Areas of Hamilton Township, Ohio, for Roads, Fire, Police, and Parks.’ Fees are assessed whenever someone applies for a zoning certificate for new construction or redevelopment. Properties developed before the effective date of the Resolution are not assessed the fees.

The aim of the new impact fees is ‘to ensure that impact-generating development bears a proportionate share of the cost of improvements to the Township’s major roadway facilities, its fire and police protection, and its park system.’ Fees are assessed based upon the proposed land use for which the zoning application is made, on either a per unit basis, or per 1000 square foot basis for some commercial development. Only residential units are charged the parks impact fee.

Collected fees are kept in accounts for each of the four categories of impact fees, and are kept separate from the Township’s general fund. Each of the four impact fee accounts contain fees collected from all over the Township. There are no geographical subcategories in each account. What this means is that fees paid in one geographical area of the Township may not necessarily be spent in that geographical area. For instance, a parks fee paid for a particular subdivision may be spent creating a park distant from that subdivision. The Resolution requires that fees be spent on projects initiated within three years of the date the fees were collected. The Resolution contains provisions for refunding fees that have not been spent within time limits provided for in the Resolution. There are other provisions that permit developers to receive improvements they constructed.

(Trial Court, Entry Granting Partial Summary Judgment to Defendants at 2-4)

ARGUMENT IN SUPPORT OF RESTATED PROPOSITIONS OF LAW

Restated Proposition of Law No. I:

A Home Rule Township, acting under the grant of limited self-governance and exercise of police powers in Chapter 504, has the authority to enact an impact fee that is not in conflict with Ohio general law and is not a tax.

In its Proposition of Law No. I, Appellants propose, “A limited home rule township may not

impose impact fees.” (Memorandum in Support of Jurisdiction at 6) However, the bulk of Appellants’ argument attempts to suggest that the Hamilton Township Resolution did not enact an impact fee at all, but rather a tax (or, in Appellants’ awkward usage, an “impact fee tax”).

Appellants apparently seek to broaden the import of this case by suggesting, “The Township has argued that a limited home rule township’s powers are co-extensive with that of a home rule municipality” and that the Township “reads the *limited* aspect of ‘home rule’ right out of its title.” (Id.) That is not an accurate statement. The Township, as well as the courts below, acknowledged the relevant statutory limitations as to conflict with general law, and the preclusion of taxing without specific authorization by the Assembly. In the courts below, Hamilton Township explained that these limitations, which apply to Limited Home Rule Townships, but not to municipalities, did not prevent the Township from legitimately enacting the Impact Fee Resolution. Neither Hamilton Township, nor the Trial Court, nor the Court of Appeals, concluded a Home Rule Township’s powers were co-extensive with a municipality. The courts below did not apply the municipality constitutional standard to a Home Rule Township’s statutorily-granted exercise of power. While that might be a matter of public and great general interest – had it occurred – there was no such misstep. The lower courts’ analysis of the Resolution was premised entirely upon the powers and limitations provided to Home Rule Townships under Chapter 504.

1. The Hamilton Township Resolution does not conflict with “general law.”

By its terms, R.C. Chapter 504 limits Home Rule Township’s self government and exercise of police powers to those measures which do not conflict with Ohio general law. As the courts below correctly found, after examining the various statutes regarding funding of improvements to roads, parks and police and fire protection infrastructure, there is no conflict.

Appellants’ argument that there is a conflict is mistakenly premised on confusion of the

powers of a non-home rule township and the greater powers of a Home Rule Township. A Home Rule Township can act generally, pursuant to Chapter 504, to self-govern and may exercise police power within the statutory limitations (conflict with general law and limitation as to tax), while a non-home rule township, created pursuant to R.C. 503, can act only when specifically authorized by statute. Appellants state that the statutes which specifically authorize township action form “a comprehensive, field-occupying, structure of law that dictates the means by which *townships* may permissibly raise revenues for road, park, police and fire improvements. This structure [is] comprehensive. The legislature left no room for townships to supplement it.” (Memo in Support at 13 (emphasis added)) Appellants simply fail to distinguish between the methods by which a non-home rule township may raise revenues (only when specifically authorized by statute), and the methods by which a Home Rule Township may raise revenues (self-govern and exercise police powers so long as not conflicting with general law, and tax when authorized by statute). The lower courts correctly resisted Appellants’ attempt to confuse or ignore this statutory distinction.

Thus, Appellants argue that the statutes which provide various mechanisms for funding of road improvements by townships in R.C. 5571.15 and R.C. 5573.07 are “the *only* mechanisms for funding township road improvements.” (Memo in Support at 13 (emphasis original)) Appellants do not even acknowledge the two types of townships. They make a similar argument with regard to funding of improvements to township parks and police and fire districts. Appellants claim that the statutes which enable a township to tax “all of the taxable property” in the district are the only means, under R.C. 505.39, 505.51, 511.27 and 511.33, by which a township may raise revenue: “Because state statutes detail the permissible means by which a township may raise revenue, those means are exclusive and pre-empt a township’s ability to raise revenue using other techniques, including the impact fees in dispute here.” (Memo in Support at 13) Appellants again ignore the

grant of self- governance for Home Rule Townships in Chapter 504. To Appellants, a Home Rule Township may raise revenues only by the means provided by statute to any township, whether home rule or non-home rule.

Appellants argue in support of jurisdiction that this Court must “define the parameters of limited home rule powers.” (Id. at 3) But the parameters are clearly set forth in the different statutes governing Home Rule Townships (R.C. Chapter 504) and non-home rule townships (R.C. Chapter 503). Appellants would confuse those separate grants of powers so as to invite this Court to clear up the confusion. The confusion proposed by Appellants is entirely self-created. There is no need for this Court to distinguish what is clearly set forth in the separate statutory schemes.

The Court of Appeals conducted “an extensive review” of the provisions in Chapters 505, 511, 5571, and 5573 regarding funding of township roads, parks, police and fire protection, and found that none of them “expressly prohibit townships from charging impact fees” for such infrastructure, nor did they provide “the exclusive means” for infrastructure funding. (Court of Appeals Opinion at 8, citing *City of Fairfield v. Stephens*, Butler App. No. CA 2001-06-149, 2002-Ohio-4120, ¶ 19; *Mendenhall v. Akron*, 117 Ohio St. 3d 33, 2008-Ohio-270, ¶ 32, *Village of Struthers v. Sokol* (1923), 108 Ohio St. 263, syllabus, ¶ 2.)

In the more detailed analysis of the Trial Court (cited with approval by the Court of Appeals in Opinion at 8), the Trial Court examined statutes regarding funding of roads. R.C. 5571.01(A) allows a township to construct or improve any public road under its jurisdiction, and R.C. 5571.14(A) provides that the costs to construct or improve a road “may be paid by any of the methods provided in § 5573.07 of the Revised Code.” The referenced section, 5573.07, permits road improvements to be funded through assessments, levies or “from any funds in the township treasury available therefor.” R.C. 5573.07(B)(2). In addition, R.C. 5573.09 permits the township board to

order the payment of road construction to be made from the proceeds of a levy, “or out of any road improvement fund available therefor.” R.C. 5573.09. After reciting these statutory provisions, the Trial Court correctly found:

Nothing in these sections expressly prohibits the use of alternative methods for funding road improvements. Nothing in the statutes expressly requires that ‘road improvement funds’ contain only proceeds of levies or assessments. The Ohio Supreme Court has declined to adopt a field pre-emption analysis for ‘conflict’ in these cases, and this court declines to adopt such an analysis here. The court concludes that the impact fee resolution does not permit a funding mechanism forbidden by the Revised Code, and does not forbid any funding mechanism permitted by [the Impact Fee Resolution]. (Trial Court Entry at 9)

The Trial Court undertook similar analysis of the statutes regarding funding of township parks in Chapter 511, funding of police and fire protection in Chapter 505, and similarly concluded that the Impact Fee Resolution is not in conflict with those statutes. (Id. at 9-10)

The close statutory analysis of the lower courts maintains the distinction between the powers of the two types of townships, and analyzes in detail the language of the funding statutes in reaching the correct conclusion that the statutes are not the exclusive means by which a Home Rule Township must fund these services, nor do the statutes prohibit a Home Rule Township from charging impact fees. The lower courts simply analyzed the operation of the statutes: a necessary and well-executed task of statutory construction, but not a matter of public or great general interest.

2. An impact fee resolution that raises revenues closely tied to infrastructure for new development is a fee imposed by government for service provided, and is not a tax.

Ohio courts, including this Supreme Court, have examined the difference between fees and taxes in many cases. This is not a novel area of law requiring the Court to further refine existing law. The lower courts carefully examined the nature and condition of the impact fee in this particular Resolution and concluded that under the applicable legal factors, the Hamilton Township Resolution

properly imposed a fee, not a tax. The inquiry of the courts below was highly specific to the actual impact fee in this case.

There is no single test to determine whether an enactment is a fee or a tax; rather, this Court has held that the inquiry must be conducted on “a case-by-case basis dependent upon the facts and circumstances of the enactment.” *Withrow*, 62 Ohio St. 3d at 116-117, 579 N.E.2d 705. The reviewing court is charged with examining “the substance of the assessments, and not merely their form.” In *Withrow*, the circumstances examined by the Court were (1) whether the charges imposed were for government service; (2) whether the charge generates excess fees that are placed in a general fund, rather than being segregated and used for purposes related to the fee; and (3) whether the measure is regulatory as opposed to revenue generating. *Id.*

Because each tax/fee inquiry must be resolved on a case-by-case basis, the scope of the ruling below in this case is itself tied to the nature of a single impact fee measure passed in Hamilton Township, and is correspondingly less a matter of public and great general interest.¹

Appellants are simply wrong when they state, “All Ohio appellate courts that have addressed the issue, save one [referencing the present decision of the Twelfth Appellate District], have determined that impact fees are taxes.” (Memo in Support at 8) Where the fee is tied to the provision of additional services caused by new development, as in the present matter, it will be upheld as a proper fee. Thus, in *Amherst Bldrs Ass’n v. City of Amherst*, this Supreme Court upheld

¹Appellants cite numerous federal and out-of-state cases finding impact fee enactments to be taxes. These cases differ in the particulars of the assessment from the Hamilton Township impact fee, and the result in each case is dependent upon the factors of the given assessment. The tax-fee test remains largely the same across the jurisdictions. It is not necessary for this Court to assume jurisdiction in order to define, again, that test. Nor is it necessary for this Court to apply the test to the particulars of the Hamilton Township impact fee, when that fact-intensive inquiry was correctly conducted by the lower courts.

an ordinance imposing a fee on new users to reimburse the community for the fair share of the construction costs incurred in originally constructing a sewage system. (1980), 61 Ohio St. 2d 345, 402 N.E.2d 1181. The Court stated that a municipality could “impose upon new users a tap-in or a connection fee which bears a reasonable relationship to the entire cost of providing service to these new users.” Id. at 345, 402 N.E.2d at 1182 (syllabus). As in the present matter, the fees could not be used for general revenue purposes, but segregated into a specific fund for the specific purpose. Id.

Ohio case law properly distinguishes, on a case-by-case basis, whether the facts and terms of a revenue-raising measure are a proper impact fee, or act instead as a tax. “What is a tax for one inquiry is not necessarily a tax under other circumstances. *Withrow, supra*, at 117. Thus, in *Building Ass’n of Cleveland v. Westlake*, the Eighth District found a park impact fee ordinance used the revenues solely for “the operation and maintenance of *existing* recreational facilities” and “shifted the funding of the present recreation system from the general public to the developers and purchasers of new construction.” (1995) 103 Ohio App. 3d 546, 551-52, 660 N.E.2d 501, 504-505. Because the “undefined program” in the Westlake ordinance did not direct impact fees to expanded park facilities made necessary by new home construction, it was a tax rather than a fee. Id. In a 1978 Ohio Supreme Court case, *State ex rel. Waterbury Development Co. v. Witten*, impact fees for water tap and for parks were held to be taxes rather than fees because the *entire burden of future infrastructure improvement* was placed on the new development. (1978), 54 Ohio St. 412, 415, 377 N.E.2d 505. The structure of the impact fees in *Westlake* and *Waterbury* was radically different from the Hamilton Township impact fee.

In crafting its Resolution, Hamilton Township had the benefit of that body of existing Ohio law, and tailored the impact fee to stay within the parameters of its statutory authority and of a proper

fee, and to avoid those factors which might render it a tax. The courts below, on the basis of the same body of law, upheld the Resolution, looking at the critical issues of “whether the charge is roughly equal to the cost of providing the service, and whether the service being paid for is provided primarily to the payers of the fee, or to other persons.” (Entry at 13) The Trial Court found that each impact fee for fire or police protection, roads and parks is placed “into a segregated account that is meant to fund fire protection, police, roads and parks required to serve the new population at the same level enjoyed by existing residents.” (Id.) Each of the four impact fees were segregated into four separate accounts. The impact fees were not excessive compared to the cost of making the proposed improvements, nor inflated to cover cost of improvements that should be borne by residents of existing developments. Appellants have apparently suggested the cost of the *service* of a valid impact fee is equal only to the overhead office expense of the government providing the *service*. In Hamilton Township, the *service* paid for by the impact fee is the construction of capital assets like roads, park structures, and police and fire station fixtures, in order to maintain the same level of *service* in the future as exists now. After the new capital improvement has been completed by the impact fee, the ongoing maintenance of the improvements is borne by all taxpayers through the normal revenue sources.

As to the factor of whether the fee payer benefits from the service, the Trial Court concluded that the payers of the fee “are receiving a service in exchange for each charge” and that the fees are set so that new residents enjoy the same level of infrastructure as existing residents. (Entry at 14) Appellants did not show below that the fees will “enhance the value to existing residents of the same services.” (Id.) Hence, the Court concluded, new residents are the class benefitted by the fees. (Id.)

The lower courts examined the specific factors in the Hamilton Township Resolution and concluded that the Resolution enacted a fee rather than a tax. That conclusion is not only correct in

applying settled law, but because it is tied to the particulars of the Hamilton Township Resolution – what the Court of Appeals called “the narrow and confined facts of this case” –, this case is not a matter of public or great general interest. (Opinion at ¶ 20)

Restated Proposition of Law No. II:

The stated purpose and the actual application of a resolution are both relevant to determining the validity of that resolution.

In determining the issue of whether an impact fee charge specially benefits the property paying the fee, the Court of Appeals looked at the parties’ Stipulation as to the purpose of the impact fee: “The purpose of the impact fee is to benefit *the property* by providing the Township with adequate funds to provide the same level of service to *that property* that the Township currently affords previously developed properties.” (Opinion, ¶ 18) (emphasis original) The Court of Appeals observed, “By stipulating to these facts, builders are now bound by their agreement.” (Id.)

The stipulated facts contain not only the statement of purpose, but additional stipulations as to the actual operation of the impact fee. As to those additional facts, the Court of Appeals made the following findings (not, however, quoted by Appellants):

Furthermore, the collected charges are never placed in the Township’s general fund, but instead, separated into individual funds to be used only for narrow and specific purposes occasioned by the Township’s ever-expanding population growth. In addition, the collected charges are refunded if not spent on projects initiated within three years of their collection date. These factors, when taken together, indicate that the charges imposed by the Township are fees paid in return for the services it provides. (Opinion, ¶ 20)

Clearly, the Court of Appeals did not rely solely upon the stated purpose in holding that the charge benefits the property paying the fees. The Court reviewed the entire factual record, not only the statement of purpose. The Court of Appeals specifically stated:

Therefore, after *a thorough review of the record*, and *based on the narrow and confined facts of this case*, we find the charges imposed upon all applicants seeking

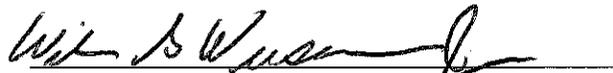
a zoning certificate for new construction or redevelopment within the Township's unincorporated areas function not as a tax, but as a fee. (Id.)(emphasis added)

The separation of powers doctrine is not imperiled by this case. Rather, in this analysis, as in others, the courts below examined the "narrow and confined facts of this case" and applied the law to the facts.

CONCLUSION.

The courts below correctly decided the issues presented in the cross-motions for summary judgment. This case does not present a matter of public or great general interest, but rather a narrow set of facts and law correctly decided by the courts below. This Court should decline jurisdiction.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify a true and accurate copy of the foregoing APPELLEES' MEMORANDUM IN OPPOSITION TO JURISDICTION was served upon the following by first-class U.S. mail, postage prepaid, on this the 12 day of OCTOBER, 2010:

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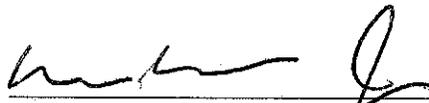
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