

IN THE CIRCUIT COURT OF THE
SEVENTH JUDICIAL CIRCUIT, IN AND
FOR PUTNAM COUNTY, FLORIDA

PUTNAM COUNTY, a political subdivision
of the State of Florida, and THE PUTNAM
COUNTY SOLID WASTE COLLECTION
AND DISPOSAL DISTRICT, a special district
created by Putnam County,

Plaintiffs,

CASE NO. 15-000449-CA

v.

PALATKA HOUSING AUTHORITY,
a public body corporate,

Defendant.

ORDER GRANTING PLAINTIFFS' MOTION FOR FINAL SUMMARY JUDGMENT

This cause came before the Court to be heard on October 13th, 2016 upon Plaintiffs' Motion for Final Summary Judgment with Supporting Memorandum of Law filed by Plaintiffs Putnam County and the Putnam County Solid Waste Collection and Disposal District, and Defendant Palatka Housing Authority's Motion for Summary Judgment and Memorandum of Law in Support. The parties stipulate that there are no material facts in dispute in this action and that this matter is properly resolved on motions for summary judgment. The Court having considered the Motions, the Affidavits and other evidence¹ filed in support of the respective motions, and having heard the argument of counsel, finds that there are no material facts in dispute and that based upon those undisputed material facts that Final Summary Judgment is

¹ Plaintiffs have filed a Request for Judicial Notice with regard to the County's Solid Waste Management Ordinance, Chapter 34, Putnam County Code of Ordinances. The Defendant has not objected, and both sides have relied on this evidence. The Plaintiffs' Request for Judicial Notice is granted. See §§ 90.202(10), 90.203, Fla. Stat.

entered on behalf of Putnam County and the Putnam County Solid Waste Collection and Disposal District, as set forth below.

FINDING OF FACTS

Putnam County (the "County") is a political subdivision of the State of Florida, and in 1987, the County created the Solid Waste Collection and Disposal District (the "District") to provide for the collection and disposal of solid waste within Putnam County. The Palatka Housing Authority (the "PHA") was created pursuant to Chapter 421, Florida Statutes, to provide for government owned and operated affordable housing units within the City of Palatka and currently owns and operates 445 residential housing units within the boundaries of the City.

Adopted in 1987, the County's Solid Waste Management Ordinance provides express authority for the provision of solid waste collection and disposal services within the County (codified within section 34-1 to 34-67, Code of Putnam County). The specific intent of the Board, as set forth in the ordinance, states as follows:

to promote the common interests of the people of the county and to provide for the collection and disposal of solid waste through the levying of fees, charges and special assessments as provided herein and to promote the health, welfare, and safety of the citizens and residents of the district by providing for the collection and disposal of solid waste through regulated services.

§ 34-31, Putnam County Code of Ordinances (emphasis added).

Under the County's Solid Waste Management Ordinance:

all property owners of residential improved property. . .located in the unincorporated area of the county and in such incorporated areas designated by interlocal agreement shall be required to receive residential commercial solid waste collection and disposal service and dispose of solid waste at a county-designated solid waste disposal facility" and "shall be subject to either a special assessment, fee or service charge in an amount

set pursuant to the procedures set forth in this chapter or general law.

§ 34-37, Putnam County Code of Ordinances (emphasis added). Pursuant to Interlocal Agreement, the City of Palatka is a participating municipality under the Solid Waste Management Ordinance.

The charges for solid waste services in Putnam County are collected in a variety of ways, dependent upon the nature of the property. These include billing conducted by the County's franchised hauler; through direct billing of a fee by the County; by tipping fees at the county's landfill; or as special assessments on the tax bill. For example, solid waste is collected from non-residential property, including governmental property, through a private contractor or by the City of Palatka, who enters into a contract with the customer for the collection of solid waste from those non-residential properties. That solid waste is then disposed of at the County's solid waste disposal facility. Primarily, the hauler then charges the property owner for the cost of collection and for the cost of disposal at the County's solid waste disposal facility.

By contrast, generally under the Ordinance, owners of improved residential property deemed as being assessable for solid waste purposes are charged the cost of solid waste disposal and recycling, both within the City and within the unincorporated area, by the levy of a special assessment collected on the ad valorem tax bill. § 34-41, Putnam County Code of Ordinances. These charges constitute a lien on the property and are subject to enforcement for non-payment in the same manner as the failure to pay ad valorem taxes. Collection in this manner provides an effective method of collecting the cost for the services rendered. § 34-2, Putnam County Code of Ordinances. For property within the City of Palatka, the cost of solid waste collection services is provided by the City on the utility bill for each of the units.

The property of PHA within the City of Palatka, which consists of the 445 affordable housing units, is unique within the County, as it represents the only governmental owned residential property in the County. As it is governmental-owned property, PHA is not assessable by the property appraiser for solid waste purposes, and therefore, the PHA is not charged a special assessment on the ad valorem tax bill. However, in addition to special assessments, the Ordinance directs that fees or service charges may also be imposed as “set forth in this article or general law.” § 34-37(a), Putnam County Code of Ordinances. Such fees and charges are to be imposed in the same amount as the special assessment rate adopted by the District, chargeable on a monthly basis. § 34-40, Putnam County Code of Ordinances.

The PHA property is subject to collection charges by the City of Palatka on its utility bill, and it pays these bills in full. However, the cost of disposal of the solid waste collected by the City is billed by the County to the PHA on a monthly basis. The charges to PHA are the same per housing unit as any other residential housing units within the City of Palatka, and the unincorporated County. Unlike other residential property within the City and the unincorporated County, there is no lien attributable to that charge imposed on the PHA owned property, nor any ability to foreclose upon those properties for non-payment. These balances historically have been paid in full by the PHA to the County over a number of years.

Over the years, the District has annually adopted a resolution setting forth the rates for solid waste disposal and tipping fees. These rates are based on the costs to the County for disposal services and include not only the management and operations of the Solid Waste Disposal Facility, but also long-term care and monitoring as required by the State of Florida. All waste disposed of at the County’s Solid Waste Disposal Facility is charged at the same rate, as set forth in the annual Resolution. In the resolutions adopted prior to the adoption of Resolution

2015-56 on July 28, 2015, the resolutions did not differentiate between the special assessment rate charged to non-governmental residential property and the fee charged to governmental owned residential property, such as the property of PHA. However, they did separately establish the tipping fee rate. Beginning with Resolution 2015-56 and subsequently, the resolution separately establishes a special assessment rate for residential property and a user fee rate for government owned property, including the property of the PHA. These rates are identical, and are based on the cost of solid waste disposal services. That same differentiation has continued in each resolution since that date. The record reflects that both before and after the change to the annual rate resolution, PHA has been billed monthly at a rate identical to the rate for other residential properties.

Historically, PHA has acknowledged the need for solid waste collection and disposal services and has paid in full for these services, both to the City and the County. Specifically as to disposal services provided by the County, in 2009, the Board of Commissioners of the PHA passed a resolution authorizing its Executive Director to enter into an agreement with Putnam County to pay the established annual fee per unit. Through FY 2012-13, the total fee was set at \$89 per year per unit. PHA paid the full amounts of the invoices from the County containing this amount. In FY 2013-14, the District increased its disposal fee to a rate of \$120 per residential unit per year, and a dispute arose with the PHA regarding payment. Beginning in October 2013, PHA has only paid the amount of \$89 per unit per year and refused to pay the actual cost of solid waste disposal.

The County at all times has continued to invoice and bill PHA on a monthly basis for the cost of solid waste disposal at the rate reflected in the annual rate Resolutions. PHA continues to

use the solid waste disposal facility of the County for the disposal of its solid waste. As of November 1, 2016, the outstanding balance owed by PHA is \$155,898.30.

PHA has raised the issue of the application of a certain Cooperative Agreement to the dispute, entered into by PHA and the County on October 25, 1966. Among the purposes of the Cooperative Agreement was to establish certain payments to Putnam County in lieu of taxes and special assessments owed by PHA. Though cited by PHA as controlling as to the units at issue in this case, the Cooperative Agreement in Paragraph 2 expressly states that the Agreement “. . . applies only to those units located outside the corporate limits of any City or Town” As such, it reflects on its face that it is not applicable to the units at issue in this case. This agreement is inapplicable also for the additional reason that the Court determines, as set forth below, the fees at issue are valid user fees, and not special assessments.

LEGAL ANALYSIS

The issue in this case is a dispute between the parties over the nature of the solid waste disposal charges imposed by the County and the District. Section 423.02, Florida Statutes, provides as follows:

423.02 Housing projects exempted from taxes and assessments; payments in lieu thereof. – The housing projects, including all property of housing authorities used for or in connection therewith or appurtenant thereto, of housing authorities shall be exempt from all taxes and special assessments of the state or any city, town, county, or political subdivision of the state, provided, however, that in lieu of such taxes or special assessments, a housing authority may agree to make payments to any city, town, county, or political subdivision of the state for services, improvements, or facilities furnished by such city, town, county or political subdivision for the benefit of a housing project owned by the housing authority, but in no event shall such payments exceed the estimated cost to such city, town, county or political subdivision of the services, improvements or facilities to be so furnished.

The County and the District contend that the charges for solid waste disposal services to PHA are user charges and that PHA is responsible for the payment. PHA contends that the charges are special assessments and that under section 423.02, Florida Statutes, it is exempt from paying any amounts for solid waste disposal services, regardless of whether it uses the services and regardless of the nature of the charge against its property.

A. The County may charge a reasonable fee for the handling and disposal of solid waste at their facilities.

Under section 403.706(1), Florida Statutes, the governing body of a county has the responsibility and power to provide for the operation of solid waste disposal facilities to meet the needs of all incorporated and unincorporated areas of the county. Pursuant to that responsibility, “Counties may charge *reasonable fees* for the handling and disposal of solid waste at their facilities.” § 403.706(1), Fla. Stat.

Pursuant to the County’s Solid Waste Management Ordinance, all property owners of residential improved property are required to receive solid waste collection and disposal service and dispose of solid waste at a county-designated solid waste disposal facility. The Ordinance further provides that the cost of the collection and disposal of solid waste will be “through the levying of *fees, charges, and special assessments.*” Under the Ordinance, residential collection services require not only that the property be residential in nature and improved, but that the property is deemed assessable by the Property Appraiser. Governmental property is not subject to assessments by the Property Appraiser of Putnam County and, therefore, the services provided to the PHA are treated differently than privately owned residential property. In addition to special assessments, the Ordinance also specifies that fees or service charges may also be imposed as “set forth in this article or general law” and are to be imposed in the same amount as

the annual solid waste disposal special assessment set forth in the rate resolution for the District, in monthly installments.

B. The fees charged to the PHA for the provision of solid waste disposal services are valid user fees, and are neither taxes nor special assessments.

It has been recognized by the Florida Supreme Court that user fees and special assessments are similar, and the boundary between them is not always clear. City of Gainesville v. State, 863 So. 2d 138 (Fla. 2003). User fees are defined as:

Charges based upon the proprietary right of the governing body permitting the use of the instrumentality involved. Such fees share common traits that distinguish them from taxes: they are charged in exchange for a particular governmental service which benefits the party paying the fee in a manner not shared by other members of society, and they are paid by choice, in that the party paying the fee has the option of not utilizing the governmental service and thereby avoiding the charge.

Id. at 144. Similarly, “special assessments are charges assessed against the property of some particular locality because that property derives some special benefit from the expenditure of the money.” Id. However, special assessments are more in the nature of taxes, in that when included on the ad valorem tax bill, loss of title to the property may result from non-payment. See Klemm v. Davenport, 129 So. 904, 907 (Fla. 1930).

For the provision of traditional utility services, such as solid waste services, Florida courts have upheld a mandatory fee. City of Gainesville, 863 So. 2d at 146; Pinellas County v. State, 776 So. 2d 262 (Fla. 2001); St. Lucie County v. City of Fort Pierce, 676 So. 2d 35 (Fla. 4th DCA 1996). Therefore, where a statute authorizes a utility fee, such fees may be considered user fees, even though mandatory.

In City of Gainesville, the Court set forth various factors to be considered in determining whether a fee is a special assessment or a user fee, including the following:

- (1) the name given to the charge;
- (2) the relationship between the amount of the fee and the value of the service or benefit;
- (3) whether the fee is charged only to users of the service or is charged to all residents of a given area;
- (4) whether the fee is voluntary—that is, whether a property owner may avoid the fee by refusing the service;
- (5) whether the fee is a monthly charge or a one-time charge;
- (6) whether the fee is charged to recover the costs of improvements to a defined area or infrastructure or for the routine provision of service;
- (7) whether the fee is for a traditional utility service; and
- (8) whether the fee is statutorily authorized as a fee.

City of Gainesville, 863 So. 2d at 145. “None of these factors are controlling; nor are they necessarily exclusive. Rather, we must consider each factor in light of the circumstances as a whole in each particular case.” Id. In balancing these factors against the particular circumstances present in this case, it is clear that the charges at issue are user fees and not special assessments.

Though the County adopted a new form of resolution in 2015 specifically differentiating between governmental and non-governmental property, the name given to the charge is not controlling in and of itself; it is the purpose of the charge which controls its nature and all of the City of Gainesville factors must be considered. As set forth above, the County’s Ordinance

contemplates that in addition to special assessments, fees or service charges can be imposed as set forth in general law. The County collects for the cost of solid waste disposal in a variety of ways, including through special assessments on the tax bill, and through fees.

Unlike other residential properties in the County, including within the City of Palatka, which pay the costs of solid waste disposal through an assessment on the tax bill, PHA, at all relevant times, has been invoiced directly on a monthly basis for disposal and recycling costs, and is not billed on the tax bill as a special assessment. Perhaps most significantly, no lien is placed on PHA property for the fees charged to PHA for solid waste disposal services provided to its residential units. By contrast, assessments collected on the tax bill of non-governmental owned residential property is pursuant to the uniform collection method and are collected in the same manner as ad valorem taxes. Those assessments create a lien on homestead property as of January 1st of each year, and are therefore, more in the nature of a tax.

Second, although there is no bright line test, “generally a ‘fee’ is exchanged for a service rendered or a benefit conferred, and some reasonable relationship exists between the amount of the fee and the value of the service or benefit, while a ‘special assessment’ is a specific levy designed to recover the costs of improvements that confer local and peculiar benefits upon a property within a defined area.” City of Gainesville, 863 So. 2d at 144-145.

In this case, the evidence indicates that the fee to PHA itself is based upon the actual costs of disposal services that are provided. No profit is built into the cost and it is calculated upon the actual cost of operations, handling and long-term monitoring of the solid waste, all in accordance with Florida law. That is essential in dealing with highly hazardous material, such as solid waste, which can create health hazards if not managed within the requirements of law.

The PHA has not challenged the calculation of the fee, or that the fee is reasonable. The fee itself is for the routine provision of the utility services and is more in the nature of a user fee.

Finally, solid waste is recognized as one of the traditional utility services, such as water and sewer services for which Florida courts have upheld fees. Fees for these services are statutorily authorized. In addition, fees for traditional utility services are voluntary where a property owner can avoid the fee. In this case, the County's Ordinance specifies that only improved properties are subject to the charge for solid waste disposal, based upon the use of the property in a manner that generates solid waste.

The PHA residential units within the City of Palatka utilize the County's solid waste disposal services by generating solid waste through the City of Palatka's collection process. PHA admits that such solid waste collected from the PHA Housing Units is disposed of at the County approved solid waste disposal facility, and that it utilizes those services. Although PHA pays the full amount of collection services to the City of Palatka, it has elected to discontinue payment for the full cost of the solid waste disposal services provided by the County. PHA is still responsible for the costs of the provision of these services where PHA is afforded the benefit of these services. These services benefit the residential properties owned and operated by PHA, and are billed to PHA based on the costs to the County, at a rate which is identical to other residential housing units. Accordingly, PHA continues to be responsible for the payment of the entire fee for the costs of the solid waste disposal services provided by the County, and nothing contained in section 423.02, Florida Statutes, or other provision of law, exempts the PHA from payment of such a valid user fee.

NOW THEREFORE, it is ORDERED AND ADJUDGED as follows:

1. The Court determines that it has jurisdiction over this matter and that there are no material facts in dispute.

2. The Plaintiffs' Motion for Final Summary Judgment is GRANTED.

3. Defendant's Motion for Summary Judgment is DENIED.

4. Putnam County and the Putnam County Solid Waste Collection and Disposal District are entitled to the entry of a declaratory judgment that the charges for solid waste disposal and recycling services imposed by the County and the District against PHA for its units within the City of Palatka are valid user fees and not special assessments.

5. The Court determines that PHA has failed to pay the full amount of the charges imposed for solid waste disposal and recycling and that they have received a benefit for such services. The amount owed through November 1, 2016 is \$155,898.30. That amount is deemed to be due and owing by PHA to the County and the District.

6. Final Summary Judgment is entered on behalf of Putnam County and the Putnam County Solid Waste Collection and Disposal District in the amount of \$155,898.30.

7. The Court reserves jurisdiction to enter such orders as are reasonable and necessary concerning the award of taxable costs in these proceedings.

DONE AND ORDERED in Chambers, at Palatka, Putnam County, Florida, this 15th day of November, 2016.



SCOTT C. DUPONT
Circuit Judge

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