SUPERIOR COURT, STATE OF ARIZONA, IN AND FOR THE COUNTY OF YAVAPAI

TOWN OF PRESCOTT VALLEY, Plaintiff vs. FRANKLIN PHONETIC PRIMARY SCHOOL, INC., Defendant.	Case No. P1300CV201600634 ORDER RE: PLAINTIFF'S APPEAL OF THE HEARING OFFICER DECISION DISMISSING CITATION	FILED DATE: NOV 15 2018 2:40 O'Clock P. M. DONNA MCQUALITY, CLERK BY: J. HARSHMAN Deputy

HONORABLE DON STEVENS	BY: Rosie Flores, Judicial Assistant
VERDE DIVISION SPT	DATE: November 13, 2018

The Arizona Court of Appeals, Division One, issued its *Order re: Special Action* and vacated the Superior Court's Order (Hon. Joseph P. Goldstein) that had affirmed the ruling of the hearing officer regarding a citation issued by Plaintiff against Defendant (hereinafter "Franklin") for an alleged parking/zoning violation. The basis for the ruling by Division One was the application of the proper standard for appellate review of actions as provided in A.R.S. §12-124 and §12-125. The correct standard for review is found in the Arizona Rules of Civil Appellate Procedure, Rule 12(b): "The Superior Court shall have full authority to decide all questions of fact and law."

This Court has therefore reviewed and considered the transcript of the hearing, the pleadings filed by each party (including appellate proceedings), and the relevant documents cited or referred to by each party in their pleadings. The Court has also reviewed and considered various official documents and actions taken by the Town of Prescott Valley in connection with the formation and implementation of the Prescott Valley Parkway Community Facilities District No. 1 (hereinafter "CFD 1"). The Court has reviewed all relevant sections of the Prescott Valley Town Code (hereinafter "Code"), referred to by the parties in argument or as attachments to various pleadings.

Section 13-24-050(B) provides that "Except in the Agricultural districts, for every structure or part thereof **hereafter erected**, or for any building converted to such uses or occupancy, or any addition thereto, **there shall be provided on the premises**, accessible off-street parking as set forth in the following: (5) Places of Public Assembly: Spaces Required: a. Auditoriums, exhibition halls, theaters, 1 per every 3 convention facilities, meeting rooms persons for which seating is provided…(8) Public and Quasi-Public Uses: Spaces Required: (a) Elementary and intermediate schools 1 per employee plus 1 per 10 students." It was undisputed that Franklin had 52 spaces on its own property and that the Code would have required on-site capacity for 98 spaces, unless some other provision in the Code applied.

It is undisputed that all of Franklin's buildings (except perhaps the auditorium) were in place on-site at the time that CFD 1 was established. Franklin argued that since building permits had been required for certain improvements on Franklin's property, including the auditorium, and since the Town would not have issued permits unless the necessary parking spaces were available pursuant to Code §§13-24-020(A) & (B). The Town admitted that such use or improvements did not change the parking requirements and argued that issuing permits was not a waiver of those requirements because the new improvements requiring permits did not change the use or require additional parking. (Transcript, p.88-89 (APP123-124, lines 1-17). Based on those undisputed facts,

the Court finds that there was no waiver by the Town of on-site parking requirements by the Town's issuance of permits for subsequent improvements. The Court finds that it was undisputed that Franklin made improvements, and the Town admitted that the improvements did not increase the number of on-site parking spaces required. Franklin's inability to produce the permits or supporting documentation under these circumstances was therefore irrelevant and harmless.

Those facts, however, do not resolve the issue of the off-site parking available to Franklin to satisfy on-site parking requirements imposed by the Code. When CFD 1 was established, the Town Code included §13-24-030 (F) which provided: **"Other off-site parking in the Town right of way may be included for required parking if such parking and the use thereof and the use is part of an approved improvement district** or otherwise approved by a development agreement with the Town." The Town disputes that CFD 1 is or was an approved improvement district established by the Town with the approval of affected property owners. It is undisputed that CFD 1 was established in the Town's right of way, with some additional land for sidewalks transferred to the Town by Defendant.

The Court expressly finds that CFD 1 meets the plain language of the Town Code. It created off-site parking in the Town right of way and the use of such parking was part of the purpose of CFD 1, including the express purpose of benefitting property owners in the area. To the extent that the Town argues that the term "may" is permissive in application, the Court finds that the "may" should be given its common meaning as allowing the property owner to count those spaces if needed. To argue otherwise is to allow the Town to arbitrarily decide who does or does not get to use the parking spaces for any purpose, including compliance with the parking space ordinance. The Court has not found any reasonable basis to modify the plain language of Town Code §13-24-030 (F) to include the express condition that parking in the spaces created by CFD 1 could only be counted if the property owner paid the assessment imposed by the Town.

The Town takes the position that Franklin was not entitled to count the offsite parking created by CFD 1 towards its own on-site parking obligations because it did not pay the assessment imposed by the Town on all non-exempt property owners for CFD 1. It is undisputed that Franklin became a non-profit entity and was exempt from the assessment. The Town asserted that it was not fair to other property owners who paid the assessment for Franklin to use spaces or count those spaces when it had not paid for such use. The Court finds that the potential exemption from paying the assessment to pay for CFD 1 was neither unique to Franklin nor unexpected by the Town. In a document entitled "Resolution 17 Parkway Community Facilities District No. 1" there are several admissions by the Town that are relevant to the Court's analysis, including the following:

In ¶4 of the Whereas provisions in Resolution 17, the Resolution provided that CFD 1 would provide a benefit to adjoining owners by "**…constructing common parking areas and assigning spaces thereon to adjoining businesses in order to reduce on-site parking needed for expansion.**" Resolution 1446 included similar language "**The public infrastructure in Area 2 will substantially increase the parking capacity for businesses.**" In ¶22 of the same Resolution, the following language was included: "Whereas in accordance with A.R.S. §42-11104(c)(1) (and as warned in the Final Limited Offering Memorandum), two parcels being used for a non-profit charter school and classified as taxable for *ad valorum* tax purposes at the time CFD 1 was created were subsequently reclassified as non-taxable." See also ¶25.

The Court finds that the Town had actual knowledge that Franklin would not be liable for the assessment because it was properly classified as exempt as a non-profit educational institution. Such exemptions are established to serve the public policy of not burdening non-profit organizations with the same taxes as

commercial entities. Those policies are codified in A.R.S. §42-11104 as the public policy of the State of Arizona. The Town's position that use of public parking spaces by a non-profit educational entity is conditioned on the payment of a tax from which that entity is otherwise exempt is not supported by Arizona law, or by any of the documents published during the formation of CFD 1 or by the Town Code.

Resolution #17, ¶4 (p.10) allowed the Town to make a written demand for payment by the owner of property classified as non-taxable. The Town made such a written request to Franklin to "voluntarily" pay the assessment. The Court finds that this demand was in effect an admission that the Town could not force Franklin to pay the assessment because it was exempt. The Town has admitted that if the off-site parking in CFD 1 is counted, Franklin would have enough parking to meet the parking requirements imposed by the Code.

The Court finds that the Town's issuance of a parking citation, and this lengthy and expensive litigation process that has resulted, appears to be nothing more than an effort by the Town to force Franklin to surrender the benefit of its tax-exempt status. The Town's position that this dispute is about fairness and not the money involved in the assessment is belied by the position that the Town continued its quest to get Franklin to pay the assessment(s) despite its clear exemption and the very provisions of the Code that permits the CFD 1 parking places to be used for purposes of complying with the Town Code. Indeed, the stated purpose of forming CFD 1 was to benefit to adjoining owners by "...constructing common parking areas and assigning spaces thereon to adjoining businesses **in order to reduce on-site parking needed for expansion**" and to "substantially increase the parking capacity for businesses".

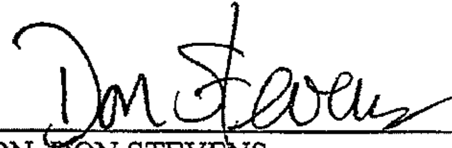
The Court finds that that the issue of "estoppel" based on alleged statements or assurances made by a Town representative before CFD 1 was formed regarding whether off-site parking created by CFD 1 could count towards on-site, is not sufficient as a matter of fact or law to apply the doctrine. The Court finds, however, that the Town must comply with the plain terms of its own Code. Under the terms of that Code, the Court finds that the off-site parking provided by CFD 1 was properly included in the computation of Franklin's compliance with the on-site parking requirements. The Court therefore finds that there was no legal basis for the Town's parking citation because Franklin was legally entitled to count on-site and off-site parking under these circumstances.

The Town also takes the position that Franklin's installation of a locked gate for the safety and security of students, parents and guests is part of the parking violation. The Court finds that having a gate did not create a violation of parking. The Court expresses no opinion about whether emergency access to police, fire, or medical personnel is otherwise required by the Town Code for public safety purposes. The issue for review is the alleged parking violation, not emergency access. The Court finds that the locked gate is not relevant to the issues before the Court.

IT IS THEREFORE ORDERED that the decision by the Hearing Officer finding in favor of Franklin is **AFFIRMED**. The Court finds that the Hearing Officer's use of the term "dismiss" rather than the proper term "not responsible" has no meaningful difference in the context of the issues raised in this case. To the extent necessary for issue preclusion, the Town is precluded from enforcing or relitigating the issue of whether off-site parking can be counted for compliance with on-site parking ordinances.

The Court notes that the Town filed *Motion for Clarification* regarding a scheduling Order that the Court filed. The Court finds that that Motion is moot in view of the Court's discussion with the parties on October 16, 2018. The Motion for Clarification and any responsive pleadings are therefore **DENIED**.

DATED this 13th day of November, 2018.



HON. DON STEVENS
Judge of the Superior Court, Verde Division SPT

cc: Steven G. Zraick – Deputy Town Attorney – *Town of Prescott Valley* – (e)
Kory A. Langhofer – *Statecraft Law* – 649 N. 4th Ave., First Floor, Phoenix, AZ 85003
Leonidas G. Condos – *The Condos Law Firm, P.L.C.* – 931 E. Southern Ave., Ste. 211
Mesa, AZ 85204