ARIZONA SUPREME COURT
ORAL ARGUMENT CASE SUMMARY

SO. ARIZ. HOME BUILDERS ASS'N v. TOWN OF MARANA
CV-21-0211-PR

PARTIES:

Petitioner/Plaintiff: Southern Arizona Home Builders Association ("SAHBA")

Respondent/Defendant: Town of Marana ("the Town")

FACTS:

Acquiring and Improving the Town's Wastewater Treatment Facility. In 2013, the Town acquired the county wastewater treatment facility that provided wastewater treatment services to Town residents. At the time, the facility's capacity was largely consumed by servicing the existing residents of the Town. Over the next few years, the Town spent over $17 million to expand the facility's capacity and to make various water quality and efficiency improvements, benefiting both existing and future residents.

Among other things, these changes allowed the Town to increase the amount of treated effluent that could be "recharged" into the Town's aquifer. Recharging permits the Town to qualify for "recharge credits," which aid in showing that the Town has a 100-year designated water supply under Arizona's groundwater management statutes and rules. Compliance with that requirement is essential for new development and municipal growth.

To pay for the facility acquisition and improvements, the Town issued 20-year bonds and adopted development fees that imposed half of the cost on future sewer customers and one-half on future water customers. None of this cost was borne by fees on existing residents, but the Town contributed $3.2 million toward the costs of the improvement projects.

The Lawsuit. In 2018, SAHBA filed a lawsuit against the Town in superior court seeking a declaratory judgment that the Town's development fees were unlawful under A.R.S. § 9-463.05, which imposes limitations on development fees that municipalities may assess on new development.

Substantially amended in 2011, the statute provides (among other things) that: (a) a "development fee shall not exceed a proportionate share of the cost of necessary public services, based on service units, needed to provide necessary public services to the development"; (b) a development fee may not be used for "[u]pgrading, expanding, correcting or replacing existing necessary public services to provide a higher level of service to existing development"; and (c) "[i]n any judicial action interpreting this section, all powers conferred on municipal governments in this section shall be narrowly construed to ensure that development fees are not used to impose on new residents a burden all taxpayers of a municipality should bear equally."

SAHBA's main argument was that the Town's development fees were unlawful under the statute because they partly funded "a higher level of service" to existing residents and because they imposed a disproportionate share of the acquisition and improvement costs on new development/future residents, given the benefits existing residents received from the facility's improvements. The parties brought cross-motions for summary judgment. The superior court ultimately granted the Town's motion and denied SAHBA's, upholding the legality of the development fees under A.R.S. § 9-463.05. SAHBA then appealed.

The Court of Appeals' Opinion. The Court of Appeals affirmed the superior court's decision. It explained that "[d]evelopment or impact fees are presumed to be valid exercises of the legislative power to regulate land use," citing *Home Builders Ass'n of Cent. Ariz. v. City of Scottsdale*, 187 Ariz. 479, 482 (1997). It acknowledged that the statute at issue says that a municipality's powers should be construed narrowly to ensure that development fees are not used to impose an unfair burden on new residents, but said that this provision "does not abrogate the presumption of validity of legislative actions."

And in applying this presumption, the court rejected all of SAHBA's arguments. Thus, it disagreed with the argument that a development fee could not be used to fund the acquisition because the facility lacked the capacity to serve new residents. It explained that the facility's acquisition was not to serve existing residents, but to foster growth by acquiring "recharge credits."

It also ruled that it did not matter that existing residents benefited from the facility's improvements, reasoning that the statute was not violated "simply because the project, undertaken to serve new development . . . happens to serve existing development as well." Just because the improvements "incidentally improve the processes serving existing resident[s]," the court continued, it did not make the fees unlawful because the improvements were "only undertaken" to ensure that the facility would have capacity to serve new development.

Similarly, it rejected the argument that the development fees forced new residents to absorb a disproportionate share of the acquisition and improvement costs, given the benefits that existing residents received. It explained that SAHBA "once again, misses the larger context: the acquisition of the [facility] and the various upgrades put in place were undertaken for the existential benefit of new development—to provide necessary public services to new development and ensure that developers could meet the 100-year assured water supply, an absolute prerequisite for any building permit." It indicated that "[t]he cost of that project is not a burden 'all taxpayers of [the] municipality should bear equally.'" As such, it ruled that "[u]nder a narrow construction of the Town's powers here, we find no disproportionality in the challenged impact fees."

ISSUES:

The petitioner has asked the Supreme Court to address the following issues:

1. Did the Town violate A.R.S § 9-463.05 by making future development bear 100% of the cost of acquiring the Facility?
2. Did the Town violate A.R.S § 9-463.05 by making future development bear nearly all of the cost of upgrading, modernizing, and improving the Facility?
3. Did the Town violate A.R.S § 9-463.05 by failing to take into account what could or could not be included in development fees under that statute, and by failing to make any proportionate allocation of costs between existing and future development?