

Bond Case Briefs

Municipal Finance Law Since 1971

ASSESSMENTS - MASSACHUSETTS

Ninety Six, LLC v. Wareham Fire District

Appeals Court of Massachusetts, Plymouth - February 14, 2018 - N.E.3d - 92 Mass.App.Ct. 750 - 2018 WL 846324

Landowner brought action against municipal fire and water district, seeking declaration that district misapplied statute governing water betterment assessments.

The Superior Court entered judgment for district. Landowner appealed.

The Appeals Court held that:

- District was not required to base its assessments solely on zoning by-laws;
- Statute permitting assessments for water services did not preclude consideration of development potential; and
- Landowner failed to demonstrate that assessments were unreasonable or disproportionate.

Language “on the basis of zoning in effect at the date of assessment,” as used in statute governing water betterment assessments based on total number of existing and potential water units to be served by new water mains, did not require municipal fire and water district to base its calculation of landowner’s assessments solely on zoning by-laws, but permitted assessments based on the development potential of the land, which entailed consideration of zoning laws and rules and regulations adopted under subdivision control law; statute was clearly intended by legislature to provide an alternative to fixed uniform rate method of assessment, statute expressly authorized assessment for potential water units to be served, and procedural safeguards protected against unreasonable assessments.

Statute authorizing a municipality to provide for special assessments to meet costs of water distribution did not preclude municipal fire and water district’s calculation of landowner’s assessments based on development potential of the land; statute’s plain language permitted assessments against a property owner whose land received benefit from the laying of water pipes in public and private ways abutting the land or by remote means received benefit through supply of water to his land or buildings.

Landowner failed to demonstrate that water betterment assessments of his land based on development potential were unreasonable or disproportionate; landowner declined multiple opportunities to submit evidence that his land was not developable, landowner had already subdivided some of his parcels, and there was nothing to indicate that the assessments at issue were unreasonable or substantially in excess of the benefits conferred on landowner.