

**IN THE COURT OF COMMON PLEAS
LICKING COUNTY, OHIO**

**JOHNSTOWN-MONROE
LOCAL SCHOOL DISTRICT
BOARD OF EDUCATION,**

Plaintiff,

v.

VILLAGE OF JOHNSTOWN, OHIO,

Defendant.

:
: Case No. 21 CV 0685
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: Judge David Branstool
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: **AMENDED COMPLAINT**
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For its Amended Complaint against Defendant Village of Johnstown, Ohio (the “Village”), Plaintiff the Johnstown-Monroe Local School District Board of Education (the “Board”) states as follows:

INTRODUCTION

1. Among the Board’s primary goals is to protect and provide a safe learning environment for its students. One way that the Board does that is through building and renovating school district buildings.

2. Historically, the Village has been supportive of the Board’s efforts to upgrade the school district’s facilities. For instance, through Village Ordinance 18-2015 (which became effective on September 10, 2015), the Village passed a resolution that reduced the water tap and capacity-charge fees that the Board would have to pay to the Village related to construction of a new high school and new elementary school buildings.

3. Currently, the Board is in the process of renovating a longtime elementary school—*Illa Searfoss Elementary School* (the “School”)—to create a more efficient and safer learning environment for its students. The project will not only update the existing building, but will also

construct a new addition.

4. Because the School was built in 1961, the current renovations occurring 60 years later require that the Board install a fire suppression system.

5. The School currently has a 3” water line that provides water service. While the 3” water line will still be sufficient for the renovated facility’s domestic water needs, the project will require that a 6” water line be installed as part of the School’s new fire suppression system.

6. The Village has on occasion raised the capacity-charge fee for the installation of new water taps. While the Board does not challenge the Village’s ability to raise the capacity-charge fee generally, the Village’s attempt to raise the capacity-charge fee for the School in this instance is unlawful.

7. As recently as June 8, 2021, the Village informed the Board via email that the capacity-charge fee for the new 6” tap at the School would be \$94,728. A copy of the email is attached hereto as Exhibit A.

8. On June 28, 2021, the Board delivered a check to the Village in the amount of \$94,728, which the Village has refused to deposit.

9. Subsequent to the June 8th email and knowing that the Board would be supplementing its existing service at the School with a 6” water line for fire suppression purposes only, the Village decided to raise the capacity-charge fee.

10. Specifically, the Village passed Ordinance 22-2021 (with an effective date of June 15, 2021) and Ordinance 29-2021 (with an effective date of July 6, 2021) as emergency legislation.

11. Among other things, the new ordinances significantly reduced the credit given to a water line that is being used exclusively for fire protection. While a line used solely for fire protection purposes would historically only be required to pay 20% of the total capacity-charge

fee, the Village raised the percentage to 50% through the new ordinances.

12. This action, if permitted, would have a huge impact on the Board; namely, it would raise the capacity-charge fee owed by the Board to the Village by over \$140,000.

13. The Village's actions, however, are not lawful for a number of reasons.

14. First, the underlying legislation by the Village was done improperly and, as a matter of law, is invalid.

15. Second, the underlying legislation by the Village expressly grandfathers in capacity-charge fees approved prior to the effective date of the legislation. As evidenced by the June 8th email, the lower capacity-charge fee had already been approved by the Village.

16. Third, the Village's 2015 ordinance providing for a 60% reduction of water tap fees and capacity-charge fees to the Board is still in effect. However, no such reduction has been provided to the Board.

17. Finally, the capacity-charge fee itself is unreasonable.

18. The Board was previously scheduled to install the 6" tap into the Village's water system on August 9, 2021.

19. However, on August 9, 2021, Jack Liggett of the Village Water Department informed the Board that it would not permit installation of the 6" tap unless and until the tap fee dispute was resolved (*i.e.*, until the Board agreed to pay the new, unlawful capacity-charge fee).

20. Construction at the School must continue—so the Board has tendered a check to the Village for the amount that the Village claims is owed.

21. To be clear, the Board expressly does not waive the right to dispute the tap and capacity-charge fees being charged by the Village and the Board fully intends to continue to pursue the right to pay a lower fee through this lawsuit.

22. However, the construction must continue to ensure that the School is ready for the start of the 2022-23 academic school year.

PARTIES, JURISDICTION, AND VENUE

23. The Board is the legislative authority of Johnstown-Monroe Local Schools. The Board is a body politic and corporate and, pursuant to R.C. 3313.17, may sue and be sued. The Johnstown-Monroe Local Schools is located in Licking County and has approximately 1,700 students.

24. Upon information and belief, the Village is a municipal corporation in Licking County organized under the laws of the State of Ohio and its Village Charter. The Village is capable of being sued.

25. The Court has original jurisdiction over this action.

26. Venue is proper in this Court pursuant to Rule 3(C) of the Ohio Rules of Civil Procedure. This Court has jurisdiction over both the subject matter of the case and the parties because Plaintiff and Defendant are located in Licking County, the water tap and water system are located in Licking County, and the events giving rise to this case took place in Licking County.

27. Jurisdiction is proper in this Court pursuant to R.C. 2305.01.

FACTUAL ALLEGATIONS

Ordinance 18-2015

28. At its September 10, 2015 meeting, the Village Council considered and passed Ordinance 18-2015. A true and accurate copy of that Ordinance is attached to this Verified Complaint as Exhibit B.

29. Ordinance 18-2015 was titled “AN ORDINANCE REDUCING THE VILLAGE OF JOHNSTOWN WATER AND SEWER TAP / CAPACITY FEES FOR THE

CONSTRUCTION OF REPLACEMENT SCHOOL FACILITIES BY THE JOHNSTOWN-MONROE LOCAL SCHOOL DISTRICT AND DECLARING AN EMERGENCY.”

30. Thus, among other things, the express purpose of Ordinance 18-2015 was to reduce the water capacity-charge fees that the Board would incur in the construction of replacement school facilities.

31. Specifically, through Ordinance 18-2015, the Village approved a 60% reduction of all tap and capacity-charge fees for the Board.

32. To the best of the Board’s knowledge, the Village has not passed subsequent legislation that repealed Ordinance 18-2015.

The Village Approves Capacity-Charge Fee For The School

33. As previously mentioned, on June 8, 2021, the Village informed the Board via email that the capacity-charge fee for the new 6” tap at the School would be \$94,728.

34. While that capacity-charge fee was itself improperly high, because it failed to include the 60% reduction provided by Ordinance 18-2015, the Board nonetheless tendered payment for that amount on June 28, 2021.

The Village Passes New Ordinances

35. A week after the Village informed the District that it owed \$94,728.00 for the 6” water line tap and capacity-charge fee at the School, the Village passed an emergency ordinance. A true and accurate copy of Ordinance 22-2021 is attached to this Verified Complaint as Exhibit C.

36. Ordinance 22-2021 sought to amend Section 921.06 of the Village’s Codified Ordinances to set new, higher capacity-charge fees when the tap at issue is for fire protection only.

37. While Ordinance 22-2021 did not raise the total capacity-charge fee, it significantly

reduced the credit (and reduction) given to users for water lines used for fire protection only. *See* Exhibit C.

38. Rather than the capacity-charge fee being one-fifth (1/5) of the capacity charge when used only for fire protection, the Village changed it to one-half (1/2) of the capacity charge. *Id.*

39. This amendment resulted in a change of the capacity-charge fee for a 6” water line for fire protection only from \$94,728.00 to \$236,820.00—a difference of \$142,092.

40. A few weeks later, the Village passed another emergency ordinance. A true and accurate copy of Ordinance 29-2021 is attached to this Verified Complaint as Exhibit D.

41. Ordinance 29-2021 is nearly identical to Ordinance 22-2021 and restates that same new, higher capacity-charge fees when the tap at issue is for fire protection only.

42. Unlike Ordinance 22-2021, however, Ordinance 29-2021 does have a clause that grandfathers in capacity fees that were previously approved by the Village. *See* Ordinance 29-2021 at Section 1(b); *see also* Ordinance 01-2021.

Neither New Ordinance Is Proper Emergency Legislation

43. The Village purportedly passed Ordinance 22-2021 and Ordinance 29-2021 as emergency ordinances.

44. The primary effect of emergency legislation is that rather than multiple readings and discussion on the ordinance and it becoming effective 30 days after introduction, the Village Council dispenses with the second reading of the ordinance and it becomes effective immediately.

45. Importantly, when the Village passed the new ordinances, the Village did not comply with the Village Charter.

46. Pursuant to Article 4.05 of the Village’s Charter, there are express requirements to

pass an emergency ordinance.

47. For instance, an emergency ordinance must declare “that it is necessary for the immediate preservation of the public peace, health, safety, or welfare, *and shall clearly specify the nature of the emergency.*” Village Charter, Art. 4.05(a) (emphasis added).

48. In Section 3 of both ordinances, the Village declared that the ordinance was “necessary for the immediate preservation of the public peace, health, safety or welfare”

49. Importantly, nowhere in either ordinance is there a discussion of the alleged emergency, a statement of why it is an emergency, or specification of the nature of the emergency.

COUNT ONE
DECLARATORY JUDGMENT
ORDINANCES 22-2021 AND 29-2021

50. The Board restates the preceding allegations as if fully rewritten here.

51. There exists a real controversy between the parties, the controversy is justiciable in character, and speedy relief is necessary to preserve the rights of the Board.

52. Article 4.05 of the Village’s Charter requires that an emergency ordinance must “clearly specify the nature of the emergency.”

53. Ordinance 22-2021 makes no mention of, much less does it “clearly specify,” the nature of the emergency.

54. Ordinance 29-2021 makes no mention of, much less does it “clearly specify,” the nature of the emergency.

55. Ordinance 22-2021 and Ordinance 29-2021 fail to comply with the Village Charter provisions governing emergency ordinances and, therefore, each is an invalid emergency ordinance.

56. The Board respectfully asks that the Court declare that Ordinance 22-2021 and

Ordinance 29-2021 are invalid.

COUNT TWO
DECLARATORY JUDGMENT
ORDINANCE 18-2015

57. The Board restates the preceding allegations as if fully rewritten here.

58. Ordinance 18-2015 titled itself as an ordinance intended to reduce the water and sewer tap / capacity fees for the construction of school facilities by the Board.

59. To accomplish that, the Village reduced the tap and capacity-charge fees for the Board at a rate of 60% across all fees.

60. The Village's express purpose in providing a 60% reduction to the Board on these charges was to invest in the school district, its students, its educators, and the local taxpayers.

61. Section One of Ordinance 18-2015 noted that the water tap, domestic water tap, and sanitary tap fees set forth in Sections 921.06 and 925.035 in the Village's Codified Ordinances are reduced by 60% for construction by the Board.

62. The Board asks that the Court declare that Ordinance 18-2015 applies to the Board's construction at the School and that any amount charged for the tap fee and capacity-charge fee be reduced by 60%, consistent with the Village's ordinance.

COUNT THREE
DECLARATORY JUDGMENT
GRANDFATHER CLAUSE IN ORDINANCE 29-2021

63. The Board restates the preceding allegations as if fully rewritten here.

64. Even if the Court fails to declare Ordinance 22-2021 and Ordinance 29-2021 invalid, the Ordinances still have not been appropriately applied to the Board.

65. Pursuant to Village of Johnstown Codified Ordinance 921.06(b) (and Ordinances 01-2021 and 29-2021), the Board is permitted to pay the capacity-charge fee previously approved

by the Village (as evidenced by the June 8, 2021 email).

66. However, the Village refuses to accept the capacity-charge fee previously approved by the Village.

67. The Board asks that the Court declare that the Village must accept the Board's payment \$94,728—which was originally approved as the tap and capacity-charge fees by the Village—as payment in full of any tap fee and capacity-charge fee related to the School.

COUNT FOUR
DECLARATORY JUDGMENT
REASONABLENESS OF THE CAPACITY-CHARGE FEE

68. The Board restates the preceding allegations as if fully rewritten here.

69. Village Ordinance 01-2021 raised the capacity-charge fee for a 6" water line by nearly 50% (to \$473,640.00).

70. Village Ordinance 22-2021 decreased the credit for the capacity-charge fee on water lines used only for fire protection from 80% to 50%.

71. The Ohio Supreme Court requires that a tap-in fee must "bear[] a reasonable relationship to the entire cost of providing service to [its] new users." *Amherst Builders Assn. v. City of Amherst*, 61 Ohio St.2d 345, 402 N.E.2d 1181 (1980), paragraph one of the syllabus.

72. The Board (and the School) is not a new user of the Village's water system.

73. The Village has provided no justification whatsoever for raising the capacity-charge fee or for decreasing the fire-protection credit.

74. The Board asks that the Court declare that the capacity-charge fee for a 6" water line established in Ordinance 01-2021 to be unreasonable and unenforceable.

75. The Board also asks that the Court declare the decrease in the fire-protection credit for 6" water lines (from an 80% reduction to a 50% reduction) to be unreasonable and

unenforceable.

COUNT FIVE
DECLARATORY JUDGMENT
REFUND OF MONEY

76. The Board restates the preceding allegations as if fully rewritten here.

77. The tap fee and capacity-charge fee charged by the Village for the Board's 6" water line used for fire suppression at the School is unlawful and unreasonable.

78. In order for construction to continue at the School, the Board has tendered a check to the Village for \$236,820—the full amount that the Village demands is owed for the capacity-charge fee.

79. Although the Board does not agree with this amount, in order to facilitate timely construction, the full amount was tendered to the Village.

80. The Board expressly did not waive the right to dispute the tap and capacity-charge fees being charged by the Village.

81. The Board requests that the Court declare that it is owed a refund for the tap fee and capacity-charge fee it has previously tendered to the Village.

82. The Board further requests that the Court Order the Village to provide a refund to the Board.

WHEREFORE, the Board demands judgment as follows:

A. A declaratory judgment that Ordinance 22-2021 and Ordinance 29-2021 do not comply with Article 4.05 of the Village Charter because they does not satisfy the requirements for an emergency ordinance and, therefore, they are invalid emergency ordinances;

B. A declaratory judgment that Ordinance 18-2015 remains in effect and any tap fee and capacity-charge fees imposed by the Village on the Board must be reduced by 60%;

C. A declaratory judgment that the Village must accept the amount previously tendered by the Board on June 28, 2021 as payment in full for any tap and capacity-charge fees related to the School;

D. A declaratory judgment that the capacity-charge fee for a 6” water line established in Ordinance 01-2021 is unreasonable and unenforceable and that the decrease in the fire-protection credit for 6” water lines is unreasonable and unenforceable;

E. A declaratory judgment that the Board is entitled to a refund of the amount it tendered to the Village for the tap fee and capacity-charge fee so that construction could continue at the School and an Order to the Village to provide such refund;

F. An award against the Village for the costs of this action as well as the Board’s reasonable attorneys’ fees; and,

G. Any further relief that this Court deems just and proper at law or in equity.

Respectfully submitted,

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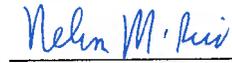
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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served via electronic mail upon the following on this 19th day of August, 2021:

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