IN THE INDIANA COURT OF APPEALS
APPEAL NO: 18A-EX-01243

NORTHCREST R.V. PARK, BARBEE LANDING MOBILE HOME PARK, KUHN LAKE LAKESIDE RESORT	)	Appeal from Indiana Utility Regulatory Commission
Appellants (Complainants below)	)	Cause No: 44973
-vs-	)	The Hon. James Huston, Chair
LAKELAND REGIONAL SEWER DISTRICT	)	The Hon. Sarah Freeman The Hon. David E. Ziegner The Hon. David Ober Commissioners
Appellee (Respondent Below)	)	The Hon. Lora L. Manion, Administrative Law Judge

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BRIEF OF APPELLEE

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I. STATEMENT OF THE ISSUES

1. Whether the Order on Summary Judgment ("Summary Judgment Order"), of the Indiana Utility Regulatory Commission ("IURC"), properly dismissed the Complaints of Appellants Northcrest RV Park ("Northcrest"), Barbee Landing Mobile Home Park ("Barbee Landing"), Kuhn Lake Lakeside Resort ("Kuhn Lake"), and Pine Bay Resort ("Pine Bay") collectively ("Appellants"), against Appellee, Lakeland Regional Sewer District ("District"), despite the fact that the IURC erroneously determined that it had jurisdiction of this dispute where, in fact, the IURC lacked jurisdiction to determine user billing classifications for regional sewer districts in that this Court and the Indiana Supreme Court have held that user classifications inherent in ratemaking falls within the authority of regional sewer districts and the statutes at issue in this matter do not specifically delegate to the IURC jurisdiction to make such classification determinations.

2. Whether the Summary Judgment Order of the IURC properly dismissed the Complaints of the Appellants where, even assuming, arguendo, that the IURC had jurisdiction to make the classification determination which Appellants sought, the undisputed evidence establishes that the classifications made by the District were not arbitrary, capricious, or contrary to law and in fact, the definitions contained in the District's Ordinance are almost identical to the definitions approved by this Court in *Yankee Park Homeowners Association, Inc. v. LaGrange County Sewer District*, 891 N.E.2d 128 (Ind. App. 2008).

3. Whether the Summary Judgment Order of the IURC properly dismissed the Complaints of the Appellants where the IURC properly utilized the District's definition of the word "campground" in determining whether the District's rates violated the provisions of Ind. Code §13-26-11-2.1.

4. Whether the IURC properly granted the District's Motion for Summary Judgment where the undisputed evidence designated by the District and the Appellants established that the properties of the Appellants were Mobile Home Courts and not Campgrounds and the Appellants failed to designate any evidence creating a genuine issue of material fact.

II. STATEMENT OF FACTS

The District is a regional sewer district, duly organized and operating pursuant to Ind. Code 13-26. (Appellants' Appendix, Vol. VII, pp. 129, 145). Following its organization, the District worked with DLZ (its engineers) and H.J Umbaugh & Associates ("Umbaugh") (its rate consultants) to do a number of things, including the preparation of rate studies and the development of a rate ordinance. (Appellants' Appendix, Vol. VII, pp. 129, 145). Starting in April 2013, DLZ, Umbaugh, and the District, began performing site visits of properties to be within the District's service area as part of the effort to classify properties and their uses. (Appellants' Appendix, Vol. VII, pp. 129-130).

Following that date, the District began drafting its rate ordinance. (Appellants' Appendix, Vol. VII, p. 130). In drafting the rate ordinance, the District used ordinances enacted by Steuben Lakes and Lagrange County as a template, and worked closely with counsel to finalize an ordinance. (Appellants' Appendix, Vol. VII, pp. 130-145).

In 2012, the District applied for a permit from the Indiana Department of Environmental Management ("IDEM"). (Appellants' Appendix, Vol. VII, p. 132). In the application, Appellants were identified as campgrounds. However, the application was completed before any site visits were made by the District or Umbaugh. In an email from DLZ, the DLZ engineer stated that:

> As discussed in our meeting with Umbaugh, our current EDU count is only an estimate and will be more accurate after the Rate Ordinance is developed and Umbaugh conducts their study (field visits and research) on the various structure uses. As expected on these unique lake projects, the final EDU count changes from

> the PER to the Final Design as additional information becomes available on the structures, ownership, property lines and land uses during the Final Design Phase.

(Appellants' Appendix, Vol. VII, p. 132).

The IDEM application was completed before any site visits were made by the District or Umbaugh. (Appellants' Appendix, Vol. VII, p. 132). After more information became available as to the structures, ownership, property lines, and land uses of each of Appellants' properties, the District classified Appellants' properties as "Mobile Home Courts" as that term is defined in the District's rate ordinance. (Appellants' Appendix, Vol. VII, p. 132).

Beginning in July of 2015, after construction of the sewer project began, the District began invoicing properties in its District to meet the interest on the revenue bonds and other expenses payable before the completion of the works. (Appellants' Appendix, Vol. VII, p. 133). Beginning in July of 2015, but before the first full invoice was sent in March, 2017, the District began billing each of Appellants' properties as "Mobile Home Courts." (Appellants' Appendix, Vol. VII, p. 133).

THE DISTRICT'S SITE VISITS

As the ordinance language was being drafted, site visits continued in early 2015, to see where certain properties and uses fell within the contemplated definitions, and the District continued to consult with counsel who was drafting the proposed rate ordinance. (Appellants' Appendix, Vol. VII, p. 130). During the site visits, the District confirmed that, according to the definitions noted below:

a. Pine Bay had 45 mobile homes and 1 recreational vehicle;

b. Northcrest had 28 mobile homes; and

c. Barbee Landing had 12 mobile homes, 2 recreational vehicles, and 1 empty lot.

d. Kuhn Lake had at least 22 mobile homes and at least three recreational vehicles.

(Appellants' Appendix, Vol. VII, p. 130).

At the same time, in February 2015, the District verified with the Indiana State Board of Health and Kosciusko County Planning Department the number of lots for Pine Bay, Northcrest, Barbee Landing, and Kuhn Lake. Each property had more than two lots, which is also confirmed by the fact that more than two mobile homes are located on each property owned by the Appellants. (Appellants' Appendix, Vol. VII, p. 130).

UMBAUGH'S SITE VISITS AND RESEARCH

Jeff Rowe is a partner at H.J. Umbaugh & Associates ("Umbaugh"), where he has been so affiliated for 19 years. (Appellants' Appendix, Vol. VII, p. 164). During that time, he has worked closely with many Indiana sewer districts, including Twin Lakes Regional Sewer District, Lagrange County Utility District, Steuben Lakes Regional Sewer District, and several others. (Appellants' Appendix, Vol. VII, p. 164). As part of his job responsibilities at Umbaugh, Rowe provides accounting and financial advisory services for governmental entities, including public utilities. (Appellants' Appendix, Vol. VII, p. 164). He has extensive experience in assisting sewer districts in rate-making functions, assisting with drafting rate ordinances, and making recommendations on classifications for properties. (Appellants' Appendix, Vol. VII, p. 164). Beginning in 2013, the District began working with Umbaugh to prepare rate studies, draft a rate ordinance, and conduct site inspections in the District to classify properties. (Appellants' Appendix, Vol. VII, p. 165).

Starting in April 2013, DLZ (the District's engineer), Umbaugh, and the District began performing site visits of properties to be within the District's service area as part of the effort to

classify properties and their uses. (Appellants' Appendix, Vol. VII, p. 165). Site visits continued into early 2015 to see where certain properties and uses fell within the contemplated definitions. (Appellants' Appendix, Vol. VII, p. 165).

During the site visits, Umbaugh discovered that:

a. Pine Bay had approximately 45 lots, on which there were 45 mobile homes.

b. Northcrest had approximately 27 lots, all with mobiles homes.

c. Barbee Landing had approximately 15 lots, all of which were occupied.

d. Kuhn Lake had 27 lots, with at least 25 occupied.

(Appellants' Appendix, Vol. VII, pp. 165-166). Based upon the site visits and Umbaugh's extensive experience in classifying properties for regional sewer districts, Umbaugh recommended to the District to classify Pine Bay, Northcrest, Kuhn Lake, and Barbee Landing as mobile home parks. (Appellants' Appendix, Vol. VII, p. 166).

As part of its ongoing services to the District, Umbaugh recently conducted further research, which confirmed its recommendation to the District to classify Pine Bay as mobile home parks. Umbaugh's recent research revealed that:

a. Barbee Landing is currently selling mobile homes, which the structures are designed for permanent and/or yearlong residency.

b. Pine Bay has mobile homes for sale which are large in size (12' x 40'), and have a fixed patio.

c. Northcrest has 28 mobile home lots, which are purportedly connected to public utilities.

d. Kuhn Lake has 28 licensed spots with 25 occupied mobile homes.

(Appellants' Appendix, Vol. VII, pp. 166, 167, 173-179). According to Rowe, all of Pine Bay'

properties contain structures that are or could be designed for permanent and/or yearlong residency. (Appellants' Appendix, Vol. VII, p. 167). In fact, most of the structures on each of Pine Bay' properties were not temporary and/or easily moveable structures, such as RVs, tents, camper trailers, camping trucks, or motor homes. (Appellants' Appendix, Vol. VII, p. 167). Based upon the site visits by Umbaugh and Rowe's extensive experience in making classification recommendations for several different Indiana sewer districts over the past 19 years, Rowe and Umbaugh recommended to the District to classify Appellants' properties as "Mobile Home Courts," as that term is defined in the District's Ordinance. (Appellants' Appendix, Vol. VII, p. 167).

ADOPTION OF RATE ORDINANCE

On June 4, 2015, the District, by its Board of Trustees (the "Board") enacted Ordinance No. 2015-02 (the "Ordinance"), an ordinance establishing the schedule of rates and charges to be collected by the District from property owners in the service area. (Appellants' Appendix, Vol. VII, pp. 131, 145, 146). There were several definitions in the Ordinance pertinent to this case. In that regard, the Ordinance provided that:

a. **"Campground"** shall mean any real property that is set aside and offered by a Person for direct or indirect remuneration of the owner, lessor, or operator thereof for parking or accommodation of Recreational Vehicles, tents, camper trailers, camping trucks, motor homes, and/or similar shelters that are not designed for permanent or year-round occupancy.

b. **"Mobile Home"** shall mean a residential structure that is transportable in one or more sections, is thirty-five (35) feet or more in length with the hitch, is built on an integral chassis, is designed to be used as a place of human

> occupancy when connected to the required utilities, contains the plumbing, heating, air conditioning, and/or electrical systems in the structure, and is constructed so that it may be used with or without a permanent foundation.
>
> c. **"Mobile Home Court"** shall mean a parcel of land containing two or more spaces, with required improvements and utilities, used for the long-term placement of Mobile Homes.

(Appellants' Appendix, Vol. VII, pp. 135, 136).

Following the enaction of the Ordinance, Northcrest, Barbee Landing, Pine Bay, and Kuhn Lake were classified as "Mobile Home Courts" but later claimed that their properties were used as campgrounds and asked to be billed accordingly to that claimed use, pursuant to I.C. 13-26-11-2.1. (Appellants' Appendix, Vol. VII, pp. 132, 146). On August 13, 2015, the District's attorney informed Barbee Landing's attorney that its request was denied. (Appellants' Appendix, Vol. VII, pp. 132, 146). On August 13, 2015, the District's attorney informed Pine Bay that its request was denied. (Appellants' Appendix, Vol. VII, pp. 132, 146). On September 2, 2015, the District's attorney informed Northcrest that its request was denied. (Appellants' Appendix, Vol. VII, pp. 132, 146). On or about April 11, 2017, the District's attorney informed Kuhn Lake's attorney that its request was denied. (Appellants' Appendix, Vol. VII, p. 132). The District took no further action on the above requests. (Appellants' Appendix, Vol. VII, pp. 132, 146).

In response to Pine Bay's Complaint, the Consumer Affairs Division Analyst made an initial determination consistent with the District's position that the IURC lacks jurisdiction to determine whether a property is a campground, and that Pine Bay's billing dispute did not fall under one of the three issues raised in Ind. Code §13-26-11-2.1. (Appellants' Appendix, Vol. VII, pp. 146, 162-163).

Recent Observations

In November and December of 2017, Jim Haney personally observed some residents occupying mobile homes in Pine Bay. While driving by Pine Bay, Haney observed some vehicles parked around more than one mobiles home, along with lights turned on at night. (Appellants' Appendix, Vol. VII, p. 180). From his observations in November and December of 2017, it was clear that some individuals were occupying their mobile homes at Pine Bay. (Appellants' Appendix, Vol. VII, p. 180).

III. SUMMARY OF THE ARGUMENT

The IURC's dismissal of Appellants' Complaints was appropriate because it lacked jurisdiction to make user classification determinations. Both the Indiana Supreme Court and this Court have held that rate making is a legislative and not a judicial function and that user classifications are inherent in rate making. Therefore, a regional sewer district's classifications of an entity as a mobile home court rather than a campground falls under its rate making authority. The statutes at issue in this case do not grant to the IURC the authority to determine user classifications.

Indeed, the IURC, as an administrative agency, derives its power and authority solely from statute and unless an express grant of power and authority is found in the statutes, it does not exist. In this case, Ind. Code §13-26-11-2.1 does not give the IURC the authority to determine billing classifications for regional sewer districts. Instead, under the statute, the IURC's role is limited to reviewing the billing methodology once a regional sewer district classifies a facility as a campground.

Even assuming, arguendo, that the IURC had jurisdiction over a classification dispute, that jurisdiction would be limited to the arbitrary, capricious or contrary to law standard. The

Appellants simply failed to present any evidence that the District's user classifications of campgrounds and mobile home parks were arbitrary, capricious or contrary to law.

Moreover, the IURC properly applied the District's user classifications in this case. As this Court has previously determined, a regional sewer district has the power to classify its users as either campgrounds or mobile home courts. In circumstances such as this, where the General Assembly did not define the term campground, and where the regional sewer district is authorized to define that term as part of its rate making authority, the IURC properly utilized the District's user classifications in resolving the dispute between the parties. The IURC was not bound to apply the dictionary definition of the term campground, nor was the IURC required to apply the administrative rules of another agency in determining the meaning of the term campground in this case.

The IURC properly entered summary judgment in favor of the district by reviewing the undisputed evidence before it and finding, based on that evidence, the District did not misclassify the Appellants' operations as mobile home courts under its Ordinance. The District met its burden to demonstrate the absence of any issue of fact that the Appellants were properly classified as mobile home courts and not campgrounds under the District's Ordinance. That shifted the burden to the Appellants to designate evidence creating a genuine issue of material fact. The Appellants failed to do so in this case. Accordingly, the IURC properly dismissed the Appellants' Complaints pursuant to its Summary Judgment Order.

IV. ARGUMENT

A. Standard Of Review

An Order from the IURC is presumed valid unless the contrary is clearly apparent. *Citizens Action Coalition of Indiana, Inc. v. Northern Indiana Public Service Company,* 76 N.E.3d 144,

151 (Ind. App. 2017). More specifically, on matters within its jurisdiction, the IURC enjoys a wide discretion and its findings and decision will not be lightly overridden simply because this Court might reach a different decision on the same evidence. *Id*.

In reviewing an IURC decision, this Court applies a multi-tiered standard of review. Id. First, the Court must determine whether a specific findings exist of all factual determinations material to the ultimate conclusions. *Id*. Second, the Court must consider whether substantial evidence supports the IURC findings. *Id*. at 152. Finally, the Court must determine whether the decision is contrary to law. *Id*. Insofar as the Order deals with a subject within the IURC's special competence, courts should give it greater deference. *Northern Indiana Public Service Company v. United States Steel Corp.*, 907 N.E.2d 1012, 1016 (Ind. 2009).

While appellate courts apply a de novo standard of review in reviewing a trial court's summary judgment order because the reviewing court faces the same issues that were before the trial court and analyzes it in the same way, by contrast, review an agency order does not involve the same analysis on appeal. *Id*. at 1018. Agencies are not judicial bodies. Instead, they are executive institutions which the General Assembly has empowered with delegated duties. *Id*. As such, an adjudication by an agency deserves a higher level of deference than a summary judgment order by a trial court falling squarely within the judicial branch. *Id*. Therefore, appellate courts must apply the established standard of review for judicial review of commission orders. *Id*.

Basic facts are reviewed for substantial evidence, legal propositions are reviewed for their correctness. *Id*. Ultimate facts or "mixed questions" are evaluated for reasonableness, with the amount of deference depending on whether the issue falls within the commission's expertise. *Id*.

Generally, summary judgment orders, like orders of the IURC, are clothed with a presumption of validity. *Lee v. Bartholomew Consolidated School Corp.*, 75 N.E.3d 518, 523

(Ind. App. 2017). The appellant bears the burden of establishing that the entry of summary judgment was erroneous. *Id*. If the grant of summary judgment can be sustained on any theory or basis supported by the record, this Court must affirm. *Id*.; *Boushehry v. City of Indianapolis,* 931 N.E.2d 892, 895 (Ind. App. 2010).

B. The IURC Properly Dismissed The Appellants' Complaints Because It Lacked Jurisdiction To Make User Classification Determinations

In its Summary Judgment Order, the IURC erroneously concluded that it had jurisdiction in this matter to make classification determinations. However, as noted above, this Court may affirm the Order of the IURC dismissing the Appellants' Complaints on any basis contained in the record. Accordingly, this Court may affirm the IURC's dismissal of the Appellants' Complaints on the basis that it did not have jurisdiction to make classification determinations with regard to the Appellants' properties.

The Indiana Supreme Court has noted that rate making is a legislative and not a judicial function. *Board of Commissioners of Bass Lake Conservancy District v. Brewer*, 839 N.E.2d 699, 701 (Ind. 2005). As this Court has noted, user classifications are inherent in rate making. *Yankee Park Homeowners Association v. LaGrange County Sewer District,* 891 N.E.2d 128, 131 (Ind. App. 2008), quoting *GPI at Danville Crossing LP v. West Central Conservancy District,* 867 N.E.2d 645, 650 (Ind. App. 2007). Accordingly, a regional sewer district's classification of an entity as a mobile home court falls under its rate making authority. *Yankee Park, supra*.

As noted in *Yankee Park*, regional sewer districts are governed by Ind. Code §§13-26. *Id*. Ind. Code §13-26-5-2(7) grants a regional district to power to:

> "Fix, alter, charge, and collect reasonable rates and other charges in the area served by the district's facilities to every person whose premises are, whether directly or indirectly, supplied with water or provided with sewage or solid waste services by the facilities for the purpose of providing for the following:

(A) The payment of the expenses of the district.
(B) The construction, acquisition, improvement, extension, repair, maintenance, and operation of the district's facilities and properties.
(C) The payment of principal or interest on the district's obligations.
(D) To fulfill the terms of agreements made with:
    (i) the purchasers or holders of any obligations; or
    (ii) a person or an eligible entity."

Ind. Code §13-26-11-9 provides that the District must establish just and equitable rates and charges for the use of the service provided. However, the rates and charges do not have to be uniform throughout the District for all users. Ind. Code §13-26-11-4. Instead, a district may exercise reasonable discretion in adopting different schedules of rates and charges and making classifications and schedules of rates and charges. *Id*.

Pursuant to Ind. Code §13-26-11-9, just and equitable rates and charges are those necessary to product sufficient revenue to pay all operational expenses, provide a sinking fund for debt service and reserves against default, and provide adequate working capital and money for improvements, additions, extension and replacements. Rates and charges too low to meet the financial requirements are unlawful. Ind. Code §13-26-11-9(b). As noted in *Yankee Park,* under Ind. Code §13-12-2-1, this Court must liberally construe these statutes. Id. at 132.

As *Yankee Park* makes clear, this statutory framework grants to a regional sewer district the authority and discretion to classify uses of property for purposes of rate making, including the ability to classify properties as a mobile home court rather than a campground. *Id*. By contrast, there is absolutely no statutory authority for the IURC to review or modify those classifications made by a regional sewer district.

The IURC, as an administrative agency, derives its power and authority solely from statute and unless a grant of power and authority can be found in the statute, it must be concluded that there is none. *Indiana Bell Telephone Company, Inc. v. Indiana Utility Regulatory Commission,*

715 N.E.2d 351, 354 (Ind. 1999), quoting, *General Telephone Company of Indiana, Inc. v. Public Service Commission of Indiana,* 238 Ind. 646, 651, 154 N.E.2d 372, 373 (1958). If the power to act has not been conferred by statute, it does not exist. *Southern Indiana Natural Gas Company v. Ingram,* 617 N.E.2d 943, 947 (Ind. App. 1993). Any doubt about the existence of authority must be resolved against a finding of authority. *Id*.

In its Summary Judgment Order, the IURC notes that it is well-settled that as an administrative agency, it had such implicit power and authority inherent in its broad grant of power from the legislature to regulate what is necessary to effectuate the regulatory scheme outlined by the statute. Citing, *Northern Indiana Public Service Company v. Citizens Action Coalition,* 548 N.E.2d 153, 158 (Ind. 1989). However, that principle only applies when the IURC is granted broad powers to accomplish a comprehensive regulatory scheme, such as when the IURC is given a broad range of powers to regulate public utilities as found in Title 8 of the Indiana Code. *Id*. By contrast, in this case, the IURC is limited to powers expressly provided in Ind. Code §13-26-11-2.1. There is absolutely nothing in that statute which gives the IURC power to determine billing classifications for regional sewer districts. Under the statute, the IURC's role is limited to reviewing the billing methodology once a regional sewer district classifies a facility as a campground.

Had the General Assembly wished to give the IURC the power to classify users for rate making it could have easily done so expressly in detail as it did in identifying the three narrow issues in Ind. Code §13-26-11-2.1, or as it did in authorizing the IURC to regulate the other types of utilities throughout Title 8. At the very least, the General Assembly could have defined the term "campground," as it defined terms such as "public utility," Ind. Code §8-1-2-1(a), Ind. Code §8-1-2.2-2(h) and Ind. Code §8-1-6-3; "municipal utility," Ind. Code §8-1-2-1(h) and Ind. Code

§8-1.5-6-1; "not for profit utility," Ind. Code §8-1-2-125, Ind. Code §8-1-30.3-2.5, and Ind. Code §8-1-31-5.9; or "cooperative corporation" and "general cooperative corporation," Ind. Code §8-1-17-3, so that regional sewer districts, their constituents and the IURC would know when the commission could address the issues identified in Ind. Code §13-26-11-2.1.

The IURC erroneously relies upon the opinion of the Indiana Supreme Court in *State ex rel. Paynter v. Marion County Superior Court Room No. 5,* 264 Ind. 345, 344 N.E.2d 846 (1976). However, the opinion of the Court in *State ex rel. Paynter,* is clearly distinguishable from the case at bar. In *State ex rel. Paynter*, the Indiana State Board of Health filed a motion for writ of prohibition to prohibit the respondeat superior court from enforcing an order prohibiting it from holding a hearing to determine if a person was operating a health facility without a license. The Supreme Court concluded that "if anything is clear and it is that the Health Facilities Council is empowered to determine whether a facility falls within the statutory definition." *Id*. at 849. Indeed, the statute at issue in that case expressly provided that "should the council, after investigation, deem it a possibility that any person is operating a facility as defined in said act…"

Clearly, the statute at issue in *State ex rel. Paynter* expressly gave the Board of Health jurisdiction to determine whether a party was a health care provider. That is not the case with respect to Ind. Code §13-26-11-2.1. That statute simply provides that for those entities who are deemed campgrounds under the rate classifications established by a regional sewer district, the IURC has jurisdiction to ensure that those campgrounds are being charged in an appropriate manner.

As this Court's opinion in *Yankee Park* makes clear, regional sewer districts are granted exclusive jurisdiction with respect to rate making and establishing classifications as a part of that rate making function. Because Ind. Code §13-26-11-2 does not expressly provide the IURC with

jurisdiction to determine classification disputes, the IURC lacked jurisdiction over the Appellants' Complaints in this matter.[1] Accordingly, the Order of the IURC dismissing the Appellants' Complaints should be affirmed on that basis.

C. The IURC Properly Applied The District's User Classifications In This Case

Even assuming, arguendo, that the IURC had jurisdiction over a classification dispute, the IURC properly applied the definitions contained in the District's Ordinance to determine whether the Appellants' operations constituted a campground or a mobile home court. In *Yankee Park, supra*, this Court held that review of a district's user classification is limited to the arbitrary, capricious or contrary to law standard. *Id.* at 130. The definition of mobile home court approved in *Yankee Park* is identical to the definition in the District's Ordinance in this case. The Appellants simply have failed to present any evidence that the District's user classifications are arbitrary, capricious or contrary to law. For that reason, the Summary Judgment Order of the IURC dismissing Appellants' Complaints should be affirmed.

Moreover, as the IURC properly noted in its Summary Judgment Order, there is no definition of campground in Ind. Code §13-26-11-2 and Ind. Code §13-26-11-2.1, or any other known Indiana statute. Had the General Assembly wished to do so, it could have defined "campground" in the statutes if it desired that all campgrounds be defined similarly by regional sewer districts. This lack of definition of campground indicates that the General Assembly left it to the respective regional sewer districts to define campground in their ordinances. There is no dispute that in this case, the District did exactly that by enacting its Ordinance.

[1] As in *Yankee Park*, jurisdiction to review whether a regional sewer district's Ordinance's rate classifications are arbitrary and capricious is left to the courts in a declaratory judgment action.

The extent of a district's power to classify users is found in *Yankee Park, supra*.[2] In that case, a homeowners' association that operated a seasonal facility for the long-term placement of mobile homes sued a regional sewer district seeking a declaratory judgment that an ordinance reclassifying the association's land from a campground to a mobile home court for billing purposes was arbitrary and capricious. The District had reclassified the property as a mobile home court for the following reasons:

> The District's basis for the reclassification of Yankee Park and other similarly situated properties as mobile home courts rather than campgrounds was: (1) each property had structures that were obviously mobile homes rather than recreational vehicles, campers, or tents; (2) the mobile homes were occupied for extended periods of time when the property was open for occupancy; (3) the mobile homes remained on the lots throughout the year, regardless of whether the property was open for occupancy or not; (4) the sanitary sewage collection, transmission, and treatment services were available to the properties year round and the District incurred the costs of operating and maintaining the system all year round regardless of whether a user chose to take advantage of it; and (5) similar properties in the District's Region A were charged at the mobile home court rate and the District wanted to treat the property owners in Region B consistently.

Yankee Park, 891 N.E.2d at 132. At both the trial and appellate levels, the courts agreed that the District's reasons for reclassifying the property were rational and therefore its decision to reclassify the property as a mobile home court was neither arbitrary nor capricious.

The *Yankee Park* decision is helpful in resolving this dispute because it states clearly the principles by which regional sewer districts can make decisions involving classification of property use for rate-making and billing purposes. In particular, the Court said the following:

> Thus, the question for our review is whether the District acted arbitrarily, capriciously, or otherwise contrary to law in defining mobile home and mobile home court as it did for purposes of assessing sewer rates and by classifying Yankee Park as a mobile home court. "Under this narrow standard of review, ***we 'will not intervene in a local legislative process [, if it is] supported by some rational basis***.'" [*Bd. of Dir. of Bass Lake Conservancy Dist. v. Brewer,* 839 N.E.2d 699, 701 (Ind. 2005)] (quoting *Borsuk v. Town of St. Joh*n, 820 N.E.2d 118, 122

[2] Most, if not all, of the Appellants' arguments in their respective Briefs closely mirror the arguments that were rejected by this Court in *Yankee Park*.

> (Ind.2005)). "We will find a municipal entity's action arbitrary or capricious only if it is 'patently unreasonable.' " *Id*. (quoting *South Gibson Sch. Bd. v. Sollman*, 768 N.E.2d 437, 441 (Ind.2002)). "In short, ***'[j]udicial review of whether a governmental agency has abused its rulemaking authority is highly deferential.***' " *Id*. (quoting *Ind. High Sch. Athletic Ass'n, Inc. v. Carlberg*, 694 N.E.2d 222, 234 (Ind.1997)). ***We are not permitted to substitute our judgment for the municipality's discretionary authority. Id. Rather, we may only determine whether the municipality is acting within its statutory authority***. *Id*.
>
> In *Bass Lake*, the Indiana Supreme Court noted that "[r]ate making is a legislative, not a judicial function." *Id*. "User classifications are inherent in ratemaking." *GPI at Danville Crossing, L.P. v. West Cent. Conservancy Dist.*, 867 N.E.2d 645, 650 (Ind.Ct.App.2007), *reh'g denied, trans. denied*. Thus, the ***District's classification of Yankee Park as a mobile home court falls under its ratemaking authority***. See id. ***Our review in this case is limited to determining whether the District acted within the scope of its statutory authority, and if so, whether its actions were supported by some rational basis***. See *Bass Lake*, 839 N.E.2d at 702; see also Ind. Code § 13–26–11–15(g) (noting that a court "shall determine ... (1) Whether the board of trustees of the district, in adopting the ordinance increasing sewer rates and charges, followed the procedure required by this chapter[;] (2) Whether the increased sewer rates and charges established by the board by ordinance are just and equitable rates and charges....").

Yankee Park, 891 N.E.2d at 130-31 (emphasis added).

It is significant to note that the Court held that the definitions of terms that apply to statutes under Title 13 do not include definitions for the terms "mobile home," "mobile home court," or "campgrounds." *Yankee Park*, 891 N.E. 2d at 132. The Court acknowledged the district's authority to employ its own definitions to classify a property's use for billing purposes.

It is also significant to note that this Court reviewed in detail the case of *Board of Directors of Bass Lake Conservancy District v. Brewer*, 839 N.E.2d 669 (Ind. 2005). This Court noted that the Indiana Supreme Court granted transfer and agreed with the dissent at the Court of Appeals level. In the dissent, Judge Robb stated that how a property is zoned is irrelevant to the issue of how it is to be billed by a sewer utility. *Brewer*, 818 N.E.2d 952, 960-61 (Ind. App. 2004). Based on that analysis, the court in *Yankee Park* concluded, "[a]s in *Bass Lake*, ***the statutes and regulations governing the Indiana Department of Health may define mobile home community***

and campground differently than the District's ordinance, but those definitions are not binding upon the District." *Yankee Park*, 891 N.E. 2d at 135 (emphasis added).

In this case, the District acted for the same reason and in the same manner as the district in *Yankee Park*. Indeed, in drafting its rate ordinance, the District employed definition of the terms "campgrounds," "mobile home" and "mobile home court" that were the same or similar to the definitions of those terms that this Court deemed legally sound in *Yankee Park*. The evidence also discloses that the District defined those terms by examining ordinances enacted by other local sewer districts.

The Appellants argue that the IURC, and now this Court, must apply the common dictionary definition to the term campground in this case. Certainly, while a non-technical word in a statute may be defined by its ordinary and accepted dictionary meaning, *State Department of Revenue v. Bethel Sanitarium, Inc.,* 165 Ind. App. 421, 332 N.E.2d 808, 811 (Ind. App. 1975), under Ind. Code §1-1-4-1(1) technical words and phrases having a peculiar and appropriate meaning of law shall be understood according to their technical import. When a government entity's intent reveals that a word is used in a manner different than from its common dictionary definition, the common dictionary definition must be disregarded. *Board of Directors of Bass Lake Conservancy District v. Brewer,* 839 N.E.2d 699, 702 (Ind. 2005). Moreover, the legislative purpose, as shown by the context of the statute, should not be defeated by mere blind adherence to definitions of words found in dictionaries, however reputable. *Chicago & E.I.R. Company v. Public Service Commission of Indiana*, 185 Ind. 678, 114 N.E. 414, 415 (1916).

As the Summary Judgment Order of the IURC found, when the District defined campground in a different way than the dictionary definition, it demonstrated its intent to use the term differently than the common dictionary definition. Accordingly, the common dictionary

definition must be disregarded and the District's purpose, as shown by the context of the Ordinance, should not be defeated by mere blind adherence to definitions of word found in dictionary. Accordingly, the IURC properly determined that the District's Ordinance definition of campground may not be supplanted by the dictionary definition.

The Appellants argue that Ind. Code §13-26-11-2.1 was designed to protect campgrounds from exorbitant rates or rates that are for year round usage and establish a process to review a regional sewer district's conformance with that statutory mandate. Certainly, that is exactly what the statute does. However, despite the Appellants' assertion to the contrary, it would not contravene the intent of the General Assembly to allow regional sewer districts to make rate classifications. If the legislature had, in fact, wished to remove this issue from the scope of the regional sewer district's authority, it could have explicitly done so by defining the term campground. However, as noted above, the General Assembly did not define the term campground and, therefore, such classifications, like all other rate classifications, are left to the discretion of the regional sewer district.

The Appellants argue that the application of the District's classification in this case would render the statutory protections meaningless. However, as noted by the Appellants' Briefs, there are entities being charged as campgrounds under the District's Ordinance. Accordingly, it could hardly be said that the statutory protections are rendered meaningless when there are campgrounds being charged a rate which is compliant with the what is required by the statute.

The Appellants' reliance upon the fact that their operations were referred to as campgrounds in the IDEM application filed before the Ordinance existed and before any site visits were conducted by the District or Umbaugh is an irrelevant consideration. Here, the District engaged engineers and rate consultants to perform rate studies and to develop the Rate Ordinance.

As part of the analysis, site visits were performed throughout the District as part of the effort to classify properties and their uses. The manner in which properties were being used, along with the number and nature of the structures on the properties, were considered and observed. Also, in drafting the Rate Ordinance, the District worked closely with its attorneys and it used ordinances of multiple neighboring districts as templates. Not only were the ordinances of neighboring districts relied upon as templates, but the Ordinance's definitions are the same or similar to those in the *Yankee Park* case, which case upheld the reclassification of a property from a campground to a mobile home court. Accordingly, despite the fact that the Appellants' properties were described as campgrounds at one time before any site visits were conducted, they were appropriately classified as mobile home courts following those site visits.

In fact, the District utilized the assistance of Umbaugh, which has extensive experience in performing site visits and classifying properties across Indiana. After conducting site visits of Appellants' properties, Umbaugh recommended to the District to classify them as a "Mobile Home Court" as that term is defined in the District's Ordinance. For that reason, the District, at all times, acted well within its statutory and its common law authority.

The Appellants also erroneously rely upon the fact that their operations qualify as campgrounds under the Indiana State Department of Health's definition of campground. This argument was not only properly rejected by the IURC in this case, but expressly rejected by this Court in *Yankee Park.* In *Yankee Park,* this Court specifically determined that the statutes and regulations governing the Indiana Department of Health may define mobile home community and campground differently than the district's ordinance, but those definitions are not binding upon the district. *Id.* at 134.

Finally, the Appellants spend much of their Briefs citing and relying upon dicta contained in the order which dismissed their original complaints for lack of ripeness. As the IURC concluded in the Order of the Commission on Reconsideration and Rehearing ("Reconsideration Order"), the discussion of the definition of the "campground" in Cause No. 44798 constitutes dicta, and it does not have precedential affect in this matter. (Appellants' Appendix, Vol. II, p. 50). Statements that are not necessary in the determination of the issues presented are dicta and do not become law of the case. *CBR Event Decorators, Inc. v. Gates,* 4 N.E.3d 1210, 1216 (Ind. App. 2014), citing, *DV Kruse Foundation v. Gates,* 973 N.E.2d 583, 590-591 (Ind. App. 2012).

Clearly, any discussion concerning the definition of campground and its potential application to the District's Ordinance was not necessary to the determination that the Appellants' original Complaints should be dismissed for lack of ripeness. Accordingly, the IURC properly disregarded the dicta contained in the dismissal order in Cause No. 44798.[3]

The IURC properly determined that the District properly exercised its discretion in its Ordinance when defining campground and mobile home courts. The fact that the Appellants disagree with those classifications did not require the IURC to apply its own definition to those terms. Accordingly, the Summary Judgment Order of the IURC should be affirmed on that basis.

D. The IURC Properly Entered Summary Judgment In Favor Of The District

As is made clear in the IURC's Reconsideration Order, the IURC determined that summary judgment was appropriate in favor of the District by reviewing the undisputed evidence before it and finding that based on that evidence, the District did not misclassify the Appellants' operations as mobile home courts under its ordinance. Under the Indiana summary judgment procedure, the

[3] As noted in the Verified Motion to Disqualify filed in this appeal, the Order in Cause No. 44798 relied upon by Appellants was entered by the Senior ALJ Aaron Schmoll, who is now an attorney with the firm representing Northcrest, Barbee Landing and Kuhn Lake.

initial burden is on the summary judgment movant to demonstrate the absence of any genuine issue of fact as to a determinative issue. *Hughley v. State*, 15 N.E.3d 1000, 1003 (Ind. 2014). At that point, the burden shifts to the non-movant to come forward with contrary evidence showing an issue for the trier of fact. *Id.*

In this case, it is beyond dispute that the District met its burden to demonstrate the absence of any issue of fact that the Appellants were properly classified as mobile home courts and not campgrounds under the District's Ordinance. The designated evidence confirmed that the District, along with its rates consultants and engineers, conducted site visits of the property to be located within the district service area as part of the effort to classify the properties and their uses. The site visits confirmed that Barbee had 12 mobile homes, two recreational vehicles, and one empty lot; Northcrest had 28 mobile homes; Kuhn Lake had at least 22 mobile homes; and Pine Bay had 45 lots, on which there were 45 mobile homes. Additionally, subsequent site visits were conducted which confirmed that the Appellants had the required improvements and utilities, used for the placement of the mobile homes.[4]

In sum, the designated evidence confirms that the Appellants are "mobile home courts" and the structures situated on the Appellants' properties are primarily mobile homes. Accordingly, there can be no dispute that the District met its burden demonstrating the absence of any genuine issue as to a determinative issue and that the burden shifted to the Appellants to come forward with contrary evidence to show an issue for the trier of fact. This the Appellants failed to do.

The argument the Appellants' operations are campgrounds focuses on the Ordinance's use of the word "and/or similar shelters." Appellants argue that the structures on their property are

[4] Appellants do not dispute these facts. Instead, Appellants rely on the "fact" that the mobile homes are used seasonally and contend that the fact these mobile homes were present is irrelevant to the IURC's determination. Whether the mobile homes are used seasonally does not create a genuine issue of material fact as to whether Appellants' operation are mobile home courts or campgrounds, within the meaning of the Ordinance.

"similar shelters" as described in the definition of campground. However, if "similar shelters" was intended to include mobile homes, that term would have been included. It was not because mobile homes was given its own stand-alone definition in the Ordinance. This is important because the rule of statutory construction is that the more specific statute shall prevail over the more general statute. See, *Bell v. Bingham*, 484 N.E.2d 624, 627 (Ind. App. 1985). Moreover, the campgrounds definition discussing "similar shelters" refers to structures that are not designed for permanent or year-round occupancy. It simply does not include mobile homes.

Moreover, mobile home courts cannot qualify as campgrounds when the structures are occupied seasonally or sporadically as the Appellants contend. The definition of mobile home courts includes property used for the long-term placement of mobile homes. Whether the structures are occupied full-time or part-time is an irrelevant consideration. Consider the issue of single family dwellings. Many owners of such lake homes use their property only during the busy season between Memorial Day and Labor Day, or only on weekends during that season. That does not detract from the property's classification. Moreover, those owners, like the owners of the Appellants, will be charged a flat rate year round because sewage collection and the treatment services will be available to the owners year round and the District incurs the costs of operation, maintenance, and debt service year round. Simply, the Appellants' operations are mobile home courts and not campgrounds under the definitions contained in the Ordinance.

The Appellants argue that because the IURC's Summary Judgment Order invited Appellants to file new complaints with additional information, then there must exist a genuine issue of material fact which precludes the entry of summary judgment. Specifically, Appellants argue that the language in the Summary Judgment Order makes clear that the IURC's decision rested on the lack of information presented regarding whether Appellants qualified as

campgrounds under the District's Ordinance. That is absolutely true, as the undisputed evidence designated by the District established that the Appellants' properties are mobile home courts and not campgrounds under the plain language of the Ordinance. The Appellants failed to designate contrary evidence to create a genuine issue of material fact. Accordingly, the IURC properly entered summary judgment in favor of the District in this case.

Moreover, as the IURC's Order on Reconsideration makes clear, the IURC did find that based on the undisputed evidence the Appellants' properties constituted mobile home courts. Therefore, the IURC properly entered summary judgment in the District's favor in this case.

Finally, Appellants argue that they were entitled to an evidentiary hearing and the question whether they qualify as campgrounds under the Ordinance. However, this argument is based on the erroneous assertion that the Appellants' designated evidence creating a genuine issue of material fact which preclude the entry of summary judgment. For the reasons set forth above, that is simply not the case.

The IURC did not enter summary judgment in favor of the District in this case simply because both parties moved for summary judgment in this matter. Instead, the IURC entered summary judgment in favor of the District because the undisputed evidence designated by the District established that the Appellants' properties were mobile home courts and not campgrounds. The Appellants failed to designate any evidence to the contrary which would create a genuine issue of material fact. Accordingly, the IURC's Summary Judgment Order should be affirmed in its entirety.

V. CONCLUSION

For all of the foregoing reasons, the Summary Judgment Order of the IURC should be affirmed on the basis that the IURC lacked jurisdiction to determine user billing classifications for

regional sewer districts. Even assuming, arguendo, that the IURC had such jurisdiction, the IURC properly applied the user classifications adopted by the District pursuant to its statutory authority. Finally, the IURC properly entered summary judgment in favor of the District because the undisputed evidence designated showed that the District properly classified the Appellants' operations as mobile home courts rather than campgrounds. Therefore, this Court should affirm the Summary Judgment Order of the IURC.

Respectfully submitted,

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WORD COUNT CERTIFICATION

I verify that this Brief of Appellee contains no more than 14,000 words. I verify that this Brief contains 7,679 words.

/s/ Larry L. Barnard
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CERTIFICATE OF SERVICE

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